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SENATE—*Monday, September 24, 1990*

(Legislative day of Monday, September 10, 1990)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Wherewithal shall a young man cleanse his way? by taking heed thereto according to Thy word. Thy word have I hid in mine heart, that I might not sin against Thee. Teach me, O Lord, the way of Thy statutes; and I shall keep it until the end.—Psalm 119:9, 11, 33.

Eternal God, perfect in all Thy ways, Creator, Sustainer, Consummator of history in these crucial, unpredictable hours lead us in Thy way.

Thou knoweth each of us; none is a stranger to Thee, whether they be leaders in the Middle East, Europe, Africa, Asia, or the Americas. History is known to Thee, to the end, from the beginning and where we are in between.

Give us grace, dear God, to seek Thy way, to take Thee seriously, lest we turn from Thee and lose our way. Lead us in Thine way everlasting.

In Jesus' name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 24, 1990.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the acting majority leader is recognized.

SCHEDULE

Mr. CRANSTON. Mr. President, this morning following the time for the two leaders, there will be a period for morning business not to extend beyond 10 a.m. with Senators permitted to speak therein for up to 5 minutes each.

Today, from 10 a.m. to 5 p.m., the Senate will consider S. 1224, the CAFE standards bill. Any rollcall votes on amendments on which agreement can be reached will occur after the Senate completes action on S. 1511, the older workers bill.

Under the previous unanimous-consent agreement, the Senate will consider S. 1511 for 2 hours today, beginning at 5 p.m.

Therefore, Mr. President, there will be no rollcall votes before 7 p.m. If there are votes, they will commence at that time relative to S. 1511.

RESERVATION OF LEADER TIME

Mr. CRANSTON. Mr. President, I ask unanimous consent that the time for the two leaders be reserved for their use later today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to exceed 10 minutes, with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from California.

Mr. CRANSTON. Mr. President, I am about to speak on the nomination of Judge David Souter.

I believe following my remarks Senator MOYNIHAN, the distinguished Senator from New York, will speak on another matter of very, very grave concern to the gulf situation and the role of Congress in respect to that.

I ask unanimous consent that I may proceed for 18 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MOYNIHAN. Mr. President, reserving the right to object, and I shall not object, I ask the distinguished acting majority leader, would it be possible that the time for morning business be extended to 10:30? And if so, I so request.

EXTENSION OF MORNING BUSINESS

Mr. CRANSTON. Mr. President, I think that is possible.

If there is no objection, I ask unanimous consent that the time for morning business be extended until 10:30 a.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The period for morning business has now been extended to the hour of 10:30 a.m.

SOUTER NOMINATION

Mr. CRANSTON. Mr. President, I rise to express my position on the nomination of David Souter to succeed Justice William Brennan as an Associate Justice of the U.S. Supreme Court.

The vote to confirm an individual to assume a lifetime position on the Supreme Court is one of the most important votes that any member of the Senate is ever called upon to cast.

The Constitution requires that those serving in two branches of our govern-

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

ment, the Congress and the Presidency, shall serve for fixed terms and shall be directly accountable to the electorate at regular intervals. In contrast, those serving in the third branch on the Supreme Court may serve for life. A Justice can be removed from office only upon impeachment and conviction of the severest of high crimes. The individual who succeeds Justice Brennan may serve for two and perhaps three decades, affecting the lives of millions of Americans and generations of future Americans. Those individuals who serve on the highest court of this Nation are entrusted with the responsibility of safeguarding the individual rights and liberties secured by the Constitution, and particularly the Bill of Rights.

Mr. President, the founders of the Constitution gave the U.S. Senate a very important check and balance: the power to approve or disapprove the nomination by the President of an individual to serve on the Supreme Court. Each individual Senator must determine what criteria he or she will apply when voting on a Supreme Court nomination.

Some take the position, espoused by former Attorney General Griffin Bell during his testimony supporting the Souter nomination, that there should be a rebuttable presumption in favor of confirming a nominee selected by the President.

In view of the eminently clear formula for checks and balances between the three branches of our government which is set forth in the Constitution, I have a very different view of the Senate's responsibilities.

In 1986, after extensive research and deliberation, I set forth my view on the responsibilities of the Senate in exercising its advise and consent with respect to a nomination to the Supreme Court. I did so in a Senate speech that appears in the CONGRESSIONAL RECORD of July 21, 1986. That view—expressed long before this nomination or even the Bork nomination—is that the Founding Fathers intended that the Senate should have a coequal responsibility with the executive branch in placing individuals on the Supreme Court. One of the framers of the Constitution, Gouverneur Morris, summed up the constitutional provisions on judicial appointments as giving the Senate the power "to appoint judges nominated to them by the President." Indeed, I believe that this coequal role generally has been recognized throughout most of our Nation's history, with nearly one in five of the nominations to the Supreme Court having been rejected by the Senate.

Thus, I approach this responsibility with much more gravity than merely approving a President's nomination. Way back in 1971 when the Senate considered the nomination of Justice Powell, I articulated a standard which I believe must be met by a nominee to win my vote for confirmation.

I have said in the past that the nominee must demonstrate "a basic commitment to and respect for individual rights and liberties inherent in the fabric of the Bill of Rights, for it is these rights that stand as the last bulwark between the force of government and individual freedom."

I believe that under the Constitution the burden of proof is on the nominee to establish a commitment to these fundamental rights which are protected by our Constitution.

The nomination of Judge Souter poses a perplexing dilemma. On the one hand, there is no question that he possesses the intellect and character appropriate for a judicial office. A former Rhodes Scholar, Judge Souter has impressed me with his impressive command of the law, his engaging personality, and his humility regarding the responsibilities of members of the judicial system to ensure the fair administration of justice.

The question for me is whether he has met the burden of proof in establishing his understanding of, and his commitment to, the concept of individual liberty, as embodied in the spirit and words of the Constitution.

In the case of Judge Souter, this task is complicated by the fact that although he has made the law his vocation and has performed admirably, he has virtually no prior record by which the presence or absence of that committee can be measured. The nominee at the age of 51 has served as Federal judge for only a few months prior to his nomination to the Supreme Court and has participated in no decisions. His service as a trial court judge for 5 years and as a member of the New Hampshire Supreme Court for 7 years likewise resulted in few decisions of constitutional dimension.

Prior to his service in the New Hampshire State judiciary, Judge Souter served for a number of years in the State attorney general's office, eventually becoming the New Hampshire attorney general. Quite frankly, Mr. President, some of the positions he espoused as attorney general of the State of New Hampshire—particularly those relating to separation of church and state under the first amendment and the power of Congress to implement the 14th amendment's provisions relating to racial equility—are disturbing. Although I share some of the concern expressed by various members of the Judiciary Committee regarding positions he took as attorney general that appear inconsistent with his oath of office to defend the Constitution, it is important to distinguish between those positions he felt obligated to assert on behalf of his client and his personal views.

However, Judge Souter was unwilling to make that distinction clear in matters relating to abortion in his testimony before the Judiciary Committee. Of course, if an attorney cannot in good conscience represent the needs and views of his client, he can either refuse to handle the case or he can resign his post.

In the case of Judge Souter, the restraints upon evaluating what an attorney is obligated to assert for a client and the limited number of constitutional issues addressed in his opinions on the State court result in a very scanty prior record upon which the Senate must render its decision.

In contrast, Mr. President, the last nominee to be confirmed to serve on the Supreme Court, Justice Anthony Kennedy, although only 51, had served as a Federal judge for 12 years and had taught constitutional law for a number of years. His opinions on the Federal court and activities as a constitutional scholar provided the Members of the Senate with numerous examples of his reasoning and approach to fundamental constitutional questions.

This is not the case with regard to Judge Souter. Indeed, it is no secret that many believe that President Bush selected Judge Souter precisely because there was no prior record of his views on constitutional issues. It may well be that after he has served on the Federal bench for a reasonable time, he will have developed a distinguished record on constitutional issues that would establish him as an outstanding nominee for a future Supreme Court vacancy.

However, in the absence of any meaningful prior record that would help determine how Judge Souter approaches fundamental constitutional questions, Members of the Senate are left to make a judgment based almost exclusively on Judge Souter's 3 days of testimony before the Senate Judiciary Committee.

And here, Mr. President, lies the crux of the problem for me and, I presume for other Senators.

Judge Souter has determined that the Members of the U.S. Senate are not entitled to know his views on one particular area of constitutional law—the area involving the right to privacy in matters relating to procreation—before voting on his nomination.

He steadfastly and persistently refused to answer any questions relating to this complex area although he was forthcoming in various other areas of constitutional law which may come before the Supreme Court during his term. It is difficult for the Senate to advise and consent to a nomination when the nominee is not forthcoming during the very process which is clearly defined in the Constitution as our obligation to carry out.

Mr. President, Judge Souter told the Judiciary Committee that he did not know how he would rule on any prospective future specific case involving reconsideration of Roe versus Wade and would listen to the arguments made on both sides.

That is a position which any judicial nominee is obligated to take. Indeed, any nominee who could not make that commitment should be rejected out-of-hand. A commitment not to prejudge an issue prior to hearing the arguments is an essential element of justice. No member of the Judiciary Committee or the U.S. Senate, to my knowledge, has asked Judge Souter to state how he would rule on any prospective case.

That is not what this debate is about. What Judge Souter has declined to do is reveal any of his views on the line of cases involving the fundamental right to privacy, of which Roe versus Wade is part.

During the course of his testimony, Judge Souter conceded that he did have a view regarding Roe versus Wade at the time the decision was rendered in 1973, but he would not reveal to the members of the Judiciary Committee what that view had been.

He declined to state whether he agreed or disagreed with the specific holding in the 1963 Griswold decision relating to the right of married couples to use contraceptives. He was unwilling to address the question in Eisenstadt of whether the right of privacy encompassed the rights of unmarried individuals to utilize contraceptives, although he did acknowledge the existence of a marital right of privacy.

He declined to tell the committee what his personal views on the issue of abortion were on the grounds that some might not accept the fact that his personal views would have no impact upon his judicial views. I would note that Justice O'Connor answered precisely that question and told the Judiciary Committee that she was personally opposed to abortion. She was nonetheless endorsed by numerous women's groups and confirmed by the Senate which recognized that her personal views and her judicial views were distinguishable. Justice Kennedy also distinguished his personal views from his judicial views on this issue when he appeared before the Judiciary Committee.

Mr. President, it is important to note that Judge Souter did feel free to discuss his views on numerous other issues that will be coming before the Supreme Court in the years ahead. He did not hesitate to tell the committee that he found no basis for a constitutional bar against capital punishment. He talked at length about specific cases and legal principles relating to the free exercise and establishment clauses of the first amendment—issues which are the subject of heated contemporary constitutional debate and most likely to come before the Court in the very near future. He expressed his areas of discomfort with the Lemon decision relating to separation of church and state as well as his views on the appropriateness of the strict scrutiny test for free exercise cases.

Yet, illustrating the problem which troubles me about his nomination, he declined to discuss similar matters—including the level of scrutiny to be applied—in privacy cases.

My quandary, simply put, is whether I can vote to confirm a Supreme Court nominee who refuses to reveal his views on the legal doctrines involving one of the most important constitutional issues of our time.

Mr. President, I respect and do not challenge Judge Souter's conclusion that he cannot discuss what might be his ultimate decision on Roe versus Wade. I accept the sincerity of his statement that he will not go on the Court with a preconceived agenda on how he will rule before he hears the arguments of the parties.

However, I do not believe that I can fulfill my own constitutional responsibility as a member of this body to make a judgment on the basis of the record before me as to whether or not this nominee has an adequate understanding of and commitment to one of the most fundamental and important constitutional rights citizens of the country inherently possess—the right to privacy.

For that reason, I will vote against the nomination.

THE "SINGLE ISSUE" ISSUE

Mr. President, I want to address the question which has been raised as to whether it is somehow inappropriate to vote against a nominee because of problems relating to a "single issue."

First, let me make it clear that I am not voting against this nomination because I disagree with Judge Souter on the issue of abortion, since I have no idea what his views are on abortion.

I will vote "no" because Judge Souter will not reveal his views on a fundamental constitutional issue—the right of privacy.

I will vote "no" because I do not believe that I can exercise responsibly my constitutional duty to advise and consent to a nomination when the nominee has determined to carve out one special and controversial area of the law in which he refuse to reveal his opinions—for whatever reason.

Second, it is important to understand that it is not simply the single issue of abortion or the 1973 Roe versus Wade decision that Judge Souter has refused to discuss in his testimony. He has declared the entire line of cases involving the right to privacy off-limits for discussion.

Finally, Mr. President, I am dismayed that the issue of privacy is regarded by some as "just a single issue" lacking in the kind of substantive weight that would justify a negative vote on this nomination.

There is no question but that a nominee who would vote to overturn Brown versus Board of Education or refuse to discuss that case would be rejected on the basis of the single issue of desegregation.

There is no question but that a nominee who asserted that the establishment clause of the first amendment would not preclude state officials from placing crucifixes in every public school classroom or who refused to discuss his views on cases involving freedom of speech would be rejected on the basis of such "single issues."

The right of privacy, encompassed in the long line of cases that preceded Roe and which are inextricably entwined in the Roe holding, is as important to millions of Americans as are rights relating to race or religion.

The right of privacy—the right of each American to be left alone and to be free from government surveillance and the right of each American to determine the ways in which he or she lives his or her personal life—is one of the most fundamental liberties that each American expects to enjoy. The founding fathers sought to ensure these rights two centuries ago in the Bill of Rights.

The United States of America is not a nation like Romania where government officials forced women to submit to monthly pregnancy tests or like China where the government imposes sanctions on citizens who bear more than their allotted number of children. As Justice Douglas articulated in the Griswold decision, this is not a society where we would allow the police to search our bedrooms for the "telltale" evidence of contraceptive use.

To me, the right of privacy in matters relating to family life and procreation goes to the very essence of the liberty and freedom from Government control that Americans deeply cherish. The right of privacy is not just a single issue—it is part and parcel of the fabric of ideals and values that is unique to our Nation.

Mr. President, the Supreme Court cannot overturn the Roe decision without also dismantling the cases which preceded and follow it relating to the fundamental right to privacy. The Supreme Court cannot take away the constitutional basis for the right to choose in matters relating to termination of a pregnancy without endangering the constitutional protections laid out in Griswold and Eisenstadt that allow individuals, married or unmarried, the right to purchase and utilize contraceptives to prevent pregnancy. Judge Souter understands that

linkage and indicated that is precisely the reason that he will not discuss the holdings in the two Supreme Court decisions involving contraceptives, Griswold and Eisenstadt.

OTHER CIVIL RIGHTS CONCERNS

Mr. President, in focusing my remarks on the problems which arise for me as a result of Judge Souter's refusal to respond to questions relating to the constitutional issues involving the right of privacy, I am not unmindful that a number of other concerns also have been raised about his position relating to basic civil rights questions. I also am concerned that his statement that there are no racial discrimination problems in the State of New Hampshire suggests a surprising lack of awareness of the nature of these issues.

CONCLUSION

Mr. President, let me conclude by saying that my decision to vote "no" on the nomination of Judge Souter did not come about lightly.

I recognize that in many of the statements Judge Souter made during the course of his hearing he appeared to be willing to embrace an expansive reading of the nature of constitutional liberties. This is very encouraging to those of us who see the Court's role as a guardian of individual liberties. His acknowledgement that the Bill of Rights and the Constitution itself were intended to limit the powers of Government over the liberty of individuals in areas not specifically enumerated is also encouraging. I hope that if Judge Souter is confirmed that the promise of these statements will be borne out in his actions in specific cases before the Court. I also am keenly aware of the argument that Judge Souter's commitment to keep an open mind when the Court reconsiders Roe versus Wade is probably the best that I and millions of other Americans who believe in a woman's right to choose can hope for from any nominee proposed by a President who has asked the Supreme Court to overturn Roe versus Wade. But given my view of the obligation of a Senator in casting a vote to confirm a nomination to the Supreme Court and given my view of abortion as reflected in my authorship of the Freedom of Choice Act now pending in the Senate and given the fact that Judge Souter, if confirmed, may well be the swing vote on this issue, I cannot vote to confirm his nomination.

I cannot support a nominee who refuses to acknowledge that a woman's right to choose to terminate a pregnancy is a fundamental right or that the right of individuals, married or unmarried, to use contraceptives to prevent a pregnancy, is a matter of settled law. I cannot support a nominee who regards these issues as open questions.

My view of my responsibility under the Constitution to the generations of Americans who will be affected by those decisions—particularly the millions of young women whose very lives may well depend on the right to choose whether or not to carry a pregnancy—compels me to vote "no" on this nomination.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I just briefly want to thank the distinguished, able, learned, indefatigable Senator from California, the acting majority leader. He spoke this morning of various constitutional rights of the American people, and I would like to say, and I am sure he would agree, that there is one further right which might be alluded to here which is the right, the constitutional right of the American people, to know that the Supreme Court is formed jointly by actions of the President and the Senate. The Senator cited Gouverneur Morris' evocative and interesting phrase that the Senate appoints the Court from persons nominated by the President.

Any motion that there is a rebuttable presumption on behalf of a nomination—that the Senate ought to be basically pliant in response to a nomination—is altogether unconstitutional—even anticonstitutional, and speaks to a right of the American people. The American people have a right to know, a right that resides in the Constitution, to see that the procedures of the Constitution are maintained.

No one has spoken better, more forcefully, or in a more timely fashion to that issue than the Senator from California. I thank him.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. CRANSTON. I wish to speak on the time of the Senator from New York for just 1 minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRANSTON. I thank my friend from New York for his very kind and thoughful remarks. He is a remarkable constitutional scholar, as well as a scholar on many other matters, and I think it is a rather remarkable coincidence that I came to the floor today to speak on a matter relating to the rights and prerogatives and responsibilities of the U.S. Senate and individual Senators on a matter of vast importance to the people of our country, the nomination of an individual to serve on the Supreme Court, and our joint powers in that matter, with the President of the United States.

The Senator from New York is here to speak on another grave constitutional issue at this very moment, what is occurring in the gulf, and the role of the Senate of the United States and the Congress, coequal with the President, in determining how force shall be used.

The Founding Fathers gave the Congress the right to declare war, and that is the subject upon which the Senator from New York is about to speak. I urge the Senate and the Nation to heed his words.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized.

JUDGE DAVID SOUTER

Mr. HEFLIN. Mr. President, the confirmation hearings on the nomination of Judge David Souter have been completed. They were comprehensive and thorough. These hearings reflected that careful study had been conducted by all members of the Senate Judiciary Committee during the August recess. Following the hearings I spent considerable time reviewing his writings and testimony, as well as further research on his background.

I am now persuaded that Judge David Souter should be confirmed for a seat on the U.S. Supreme Court. As I said in my opening statement before the committee hearings, the Senate must exercise its advise-and-consent responsibilities and in order to perform that role properly, we must have necessarily examined Judge Souter's background as to his legal competence, integrity, judicial temperament and the manner in which he would perceive his role as an Associate Justice on the Court.

There are those who testified before the committee who felt that the Senate needed to know Judge Souter's precise opinion on several issues of great interest, but I am of the opinion that this view is wrong—wrong especially for that of a judge whose prime function is to dispense justice fairly and impartially to those who come before his or her court and therefore not to prejudge issues without the benefit of briefs, research, and arguments.

Judge Souter's background—from excellent educational credentials to his experience as a State attorney general, trial judge, and Supreme Court Justice—has, in my opinion, more than adequately prepared him to sit on this Nation's highest court.

He perhaps ideally brings to the High Court the reflected values of a small town that is tightly knitted, that cares about its neighbors, and that reflects traditional American concepts of respect for the rights of others and respect for a fair and just society.

In listening to the several days of testimony, including those who spoke on his behalf as well as those who spoke against him, I think it is noteworthy that those who know Judge Souter personally have the highest regards for his professionalism, his char-

acter and his integrity, and his humaneness. To a person, these witnesses, who have been practitioners and former associates of Judge Souter, have spoken highly of his fairness, impartiality, and willingness to listen. This listening quality must not be underestimated in the factors which go to make up a good judge. A judge may be brilliant, he or she may be a tireless worker, but if he or she has rigid predetermined notions, how can any citizen realistically expect a fair hearing of his or her case? I am persuaded that Judge Souter possesses this endearing quality of being willing to listen—to be fair and impartial.

I accept Judge Souter's response to our committee's questions on the issues regarding the doctrines of original intent, stare decisis, statutory construction, and judicial restraint. I believe he will respect precedent regarding previous interpretations of the Bill of Rights, the due process and the equal protection clauses of the Constitution, as amended. Judge Souter will not bring a scorched earth philosophy to the Court, but he will bring a sense of historical prospective and a clearheaded approach to the analysis of legal issues.

In the end we in the Senate must ask ourselves, what is the primary role of the Supreme Court of our Nation? It is the ultimate arbiter of the Constitution and last guarantor of our freedoms.

The late Supreme Court Justice Tom Clark in an article on Justice Felix Frankfurter stated:

> For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guaradians—those impersonal convictions that made a society a civilized community, and not the victims of personal rule.
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> [Mr. Justice Frankfurter: "A Heritage For All Who Love The Law" 51 ABAJ 330 (1965).]

The Senate's advise and consent function of the Constitution has required that we look into Judge David Souter's mind and heart and ask if he will dispense justice fairly and impartially to all of those who will come before him.

Judge Frankfurter perhaps stated a judge's function best in a tribute to the late Supreme Court Justice Robert Jackson when he said:

> What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called *dominating humility.*
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> [Frankfurter, Felix, Foreward, to Memorial issue for Robert H. Jackson, 55 Columbia Law Review (April, 1955) p. 436.]

I am willing to chance that Judge David Souter possesses these qualifications. I hope he will be a faithful steward of our Constitution and will uphold the Supreme Court standard of equal justice under law.

The ACTING PRESIDENT pro tempore. The senior Senator from New York is recognized for 5 minutes.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that I be allowed to speak in morning business for as long as is necessary, in the absence of any other Senator seeking immediate recognition. I had thought we had an understanding that the acting majority leader planned to be speaking about 18 minutes and that I would take about the same amount of time. Will I be allowed 20 minutes?

The ACTING PRESIDENT pro tempore. Is there objection to the Senator's request? If not, without objection, it is so ordered. The Senator may speak until some Senator arrives, and that could be 6 minutes.

THE PERSIAN GULF AND A NEW WORLD ORDER

Mr. MOYNIHAN. Mr. President, on Thursday morning of last week our learned and hugely respected colleague, the senior Senator for Oregon, addressed the Senate on the subject of the recent deployment of American forces in the Persian Gulf. He began by expressing the pride which he felt, which we all feel, on the occasion that he took that majestic oath of office: "to support and defend the Constitution of the United States * * *."

He continued:

> But today, Madam President, that pride has somewhat diminished, because, as tens of thousands of American men and women are being sent to defend Saudi Arabia and the nations of the Persian Gulf—as the largest United States military deployment since the Vietnam war is well underway—this very Congress is cheering with one hand and sitting on the other hand. With the responsibility entrusted to this body by the Constitution and the War Powers Resolution staring us in the face, we are turning the other way. Collectively and individually, we are turning our backs on that sacred oath of office that we have taken. We are turning our backs on the law that we swore to uphold—and we are turning our backs on the responsibilities given to us by the framers of the Constitution.

And he concluded:

> As things stand now, U.S. soldiers are implementing only an executive branch policy.
>
> And that is not enough. They should be implementing a U.S. policy that has the full support of the Congress of the United States and involves all of this Nation's people.

It happens that at the very hour Senator HATFIELD was speaking here, out Permanent Representative to the United Nations, Ambassador Thomas R. Pickering, was testifying before the Foreign Relations Committee on the subject of the Persian Gulf crisis and I raised with him precisely the same point. I come to the floor this Monday morning to continue with the matter.

I should perhaps state at the outset that Senator HATFIELD and I are not entirely of the same mind as regards the relevance of the War Powers resolution to the present situation. I would hold that the relevant statute, if indeed there is a relevant statute, would be the United Nations Participation Act of 1945. But this is a small matter alongside the great fact that the Constitution surely indicates that the Senate ought to—must—participate in this action through debate and, soon now, a formal statement.

Another cogent statement on this subject appeared in this morning's Post. In an editorial entitled "Action in the Gulf: Get Congress to Vote Now," our distinguished colleague Senator COHEN argues that—

> President Bush would serve his own decision and America's cause well by complying with the formal provisions of the War Powers Act and asking the congressional leadership to schedule a vote in support or rejection of American forces being placed in circumstances involving imminent hostilities. It would not be impossible for Congress to reverse its course later and cast stones at the Oval Office, but it would be harder for it to do so once its members formally are on record in support of the operation.

The opening statements at the committee hearing led directly to this question. Senator PELL began

> In his speech to the nation Tuesday evening President Bush spoke movingly of a "fifth objective" for our Persian Gulf policy. This objection is the creation of a new world order, a world, to quote President Bush, "quite different from the one we've known, a world where the rule of law supplants the rule of the jungle."

Ambassador Pickering responded in perfect harmony.

> Two weeks ago Secretary Baker testified that "the Iraqi invasion of Kuwait is one of the defining moments of a new era—a new era full of promise, but also one that is replete with new challenges" Much of that promise and many of those challenges are to be found at the United Nations.

These are large pronouncements that respond, if anything, to even larger events. A new world order. A defining moment of a new era. The sudden reappearance of the United Nations as the setting of American foreign policy. We have not spoken in such terms for nearly half a century.

At one level events are simple enough. Almost half a century after it was founded, the United Nations appears to be working in the way we had hoped it would do. In the way we designed it to do, for the United Nations, after all, was preeminently the creation of President Franklin D. Roosevelt and his Secretary of State Cordell Hull. It embodied both the great hopes and the great anxieties that accompanied the end of the Second

World War. The great hope that the world would finally organize itself to put a stop to aggression, to war as an instrument of national policy. The great anxiety that this has been promised before, in the form of the League of Nations that ended the First World War, and that promise had failed dismally. Would this fail also?

In short order the answer seemed to be yes. A totalitarian regime in Russia simply continued the long, seemingly suicidal war of the European powers, now engaging the United States also. However the cold war gradually emerged, in the words of John L. Gaddis, as a kind of long peace. Then the regime in Russia commenced to change. It would be too much to call that country democratic today; but it is surely no longer totalitarian. It is protodemocratic, trying to learn a system it has never known—perhaps partially at times, but never entirely—but which it plainly needs and seemingly aspires to. Just Friday Mr. Gorbachev urged his parliament to grant him "emergency powers" of a kind his predecessors routinely exercised without having to bother to ask anyone! Without overstating the democratic nature of the Russian regime, nor yet asserting that democratic nations are invariably opposed to aggression by autocracies or otherwise, the fact is that when Iraq invaded and annexed Kuwait 53 days ago, a unanimous Security Council could immediately pronounce the action null and void and proceed both to impose economic sanctions, and to authorize the use of force to maintain the consequent embargo.

All this is clear. There are two crucial matters, however, that are not clear. That are not resolved.

Each takes the form of a question.

The first question has to do with the sudden emergence of "the rule of law" as the lodestar of American foreign policy. More accurately the re-emergence. Roosevelt spoke in such terms; as had Presidents before him. But the subject gradually faded, lost, if I may cite my own work, in the fog of the cold war. Thus the Security Council reacted with instant indignation at the Iraqi intrusion into various embassies in Kuwait, producing Resolution 667. Yet the United States military did as much in Panama earlier this year. The President's response on that occasion was so mild that a Washington Post editorial said that he was virtually condoning the raid. Now, however, he finds the behavior of Iraqi soldiers to be outrageous acts and clear violations of international law. May I note that I spoke in the Senate on this particular event last Thursday. See CONGRESSIONAL RECORD, page S13488.

The Senator from New York does not propose to inquire at all into what might have brought about such a seeming transformation in the language in which we discuss international events, our reference points, or announced strategies. But it does seem important that the administration make clear that such a conversion—that may not be the right word—such a transformation has taken place. That we now think what until recently we seemed not to think.

Do we really have in mind, as the President states, "a world where the rule of law supplants the rule of the jungle?" There is no reason to look upon this as inherently unlikely. To the contrary, President Bush was speaking in a direct line of Presidential pronouncements that goes back at least as far as Theodore Roosevelt. But the President and his Cabinet officers need to be candid with the Nation. This is not what our Government has been saying of late. Of late the rule of law has been a secondary object of American foreign policy; at most a weak guide to it. Thus we have begun to hear comment about the signals sent to the Iraqi regime. And this is fair enough. In 1980 that nation invaded Iran just as it has now invaded Kuwait. There was little if any American protest. Certainly the United States did not take this violation of the United Nations Charter to the United Nations Security Council. Subsequently the Iraqi regime used poison gas in direct violation of the Geneva protocol of 1925, to which it is a party. To his and our credit, our distinguished Secretary of State, George P. Shultz, protested, but the United States did nothing. As recently as June 15 of this year this Senator pressed the Assistant Secretary of State for Near Eastern and South Asian Affairs to allow that the Iraqi use of poison gas was a violation of the Geneva Treaty, to be told "I am not * * * a laywer." When the Iraq International Law Compliance Act of 1990 was offered on the Senate floor 7 days before the invasion of Kuwait the State Department opposed its enactment. The initiative for this measure came from my able colleague and fellow New Yorker, Senator D'AMATO. The Committee on Foreign Relations compiled a devastating bill of particulars. Senator D'AMATO was the principal sponsor, followed by Senator PELL, Senator HELMS, and myself. When the chairman and ranking member of the Committee on Foreign Relations assert that another nation has been in outrageous violation of international law, and offers particulars which were scarcely refutable you would suppose the Department of State would take notice. It did not. In those days it could care less about international law and suchlike fancies.

But that, of course, was 7 weeks ago. We talk differently now. So far as this Senator is concerned, this transformation is hugely to be welcomed and encouraged. I would only suggest that the President would do well to indicate that, yes, there has been a change, and, yes, the United States has returned to its earlier position in these matters. Whereupon we can get on with a new world order which is remarkably like that which America has sought through much of the 20th century. There need be no apology for this. To the contrary, we are never more ourselves than when we return to the roots of American conviction.

This prompts a second question. Do we quite understand what this rule of law involves? It would seem likely that the success of the new world order the President has spoken of will in large measure turn on the success of the current effort to impose that order in the Persian Gulf through economic sanctions. On Thursday morning I raised this subject with Ambassador Pickering. I suggested that there might be some misapprehension abroad that economic sanctions are, well, a kinder, gentler way of responding to the illegal use of force.

I suggested that it was nothing of the sort. That to succeed an economic embargo would involve a form of coercion for which the Nation has not been readied. For which the Nation has as yet but little comprehension; which in turn raised the question as to whether the administration fully or even partially understands what it is about. It had better do if it is going to succeed.

Yesterday's Washington Post carried a front page story by E.J. Dionne, Jr., entitled "Ethical Questions Arise From Gulf Strategy." The story began:

> To those who study the ethics of war, Air Force General Michael J. Dugan's declaration that the United States has planned a massive bombing campaign "whose cutting edge would be in downtown Baghdad" underscored the unexamined moral implications of taking military action against Saddam Hussein.
>
> Defense Secretary Richard B. Cheney promptly fired Dugan for his outspoken interview with three reporters, but Cheney did not dispute the accuracy of what Dugan had said. The Secretary said the Air Force chief of staff had stepped out of line by speaking speculatively about "operational details."
>
> "I'm concerned that there has never been an exact repudiation of that statement," said the Rev. J. Bryan Hehir, a professor of ethics and international politics at Georgetown University. "They've just said that he was not wise in saying it."
>
> The United States has options far short of sending bombers after Iraqi President Saddam Hussein and his mistress—another of Dugan's suggestions—that also raises ethical questions. But the threats by generals and public officials including Dugan to unleash U.S. air power against Iraq—while usually accompanied by a careful distinction that targets would be military rather than civilian—have led some ethicists to question whether the ramifications of using U.S. military forces against Iraq have been fully considered.

"We're going to give them the most violent three to five minutes they've ever seen," said Marine Maj. Gen. Royal N. Moore, expressing the Pentagon's desire to use maximum force if there is war. And Rep. Les Aspin (D-Wis.), chairman of the House Armed Services Committee, commenting on the military's opposition to gradual escalation, said, "Once you get air superiority, they will want to flatten Baghdad."

Such statements worry people such as George Weigel, president of the Ethics and Public Policy Center here, because if there is one generally accepted position among the ethics experts, it is that targeting civilian populations is the most morally alarming approach to war possible."

Mr. Dionne is a careful writer and took care to note that "The United States has options far short of sending bombers * * * that also raise ethical questions." Such questions inevitably arise in connection with economic sanctions, and it would seem to this Senator that we would do well to think about them a bit now, at the outset, rather than wait for them to crash in upon us further down the line.

The idea of economic sanctions has a long and so far unsuccessful history in the 20th century quest for a new world order that would put war behind us. It takes effort to reconstruct the intensity and optimism with which Americans responded to The Hague Conference of 1899 and those that followed. James T. Shotwell, who had a part in much of that history, describes it as "The Beginnings of Organized Peace."

In 1932 he summed up as follows:

All through history there had been protests against war, but seldom any idea that the world could get along without it. The way to escape it was to escape the world. The pathway of material development which is the basis of civilization and progress was thought to lie through fields of conflict; and advances could only be made by frankly accepting the inevitable challenge of wars, domestic or foreign. Down to our own times, the philosophy of peace was a philosophy of escape from the realities of history; the unique significance of what is happening now is that it has turned its back upon its past and in the name of practical politics, instead of unreal idealism, seeks to get rid of an instrument which has become too dangerous to be used any longer for the purpose which it had served from the beginning of time.

A revolution of this magnitude has no dates, no definite beginning at a given hour and place. The roots of it lie in that very teaching of morals and religion which we have contrasted with the practical movement of today. At the dawn of modern international law, Grotius distinguished between wars that were "just" and wars that were "unjust," and even when international anarchy was at its height, this fundamental distinction played its part. War could not be safely used as an instrument of national policy by a nation which did not believe in the justice of that policy, and governments sought to win public opinion for their cause by propaganda and the camouflage of diplomacy.

This passage is from a volume entitled "Boycotts and Peace" sponsored by the Twentieth Century Fund. The specific context was the Pact of Paris, known to us as the Kellogg-Briand pact, an American-French initiative by which most of the nations of the "civilized world" renounced war as an instrument of national policy. This was essentially an American substitute for our not having joined the League of Nations, but was not sufficient in itself. As the foreword to "Boycotts and Peace" states:

It is evident that some further agreement among all the nations, including the United States, to take positive action in the maintenance of peace is not only a condition precedent to disarmament, but a vital necessity for American diplomacy. It has been equally evident that public opinion in the United States would not tolerate any commitment to use the armed forces of the nation in the enforcement of peace in other parts of the world such as is implied in membership in the League. Some form of tangible international security is urgently called for which will rest on other foundations than military force.

The answer was economic sanctions.

John Foster Dulles, who had been counsel to the United States Commission to Negotiate Peace in Paris in 1919, was a member of the Committee on Economic Sanctions which prepared the Twentieth Century publication. He put it this way.

Since the World War there have emerged for the first time, treaties of which it can truly be said that their fulfillment is of paramount importance. I refer to treaties to maintain the peace, of which the latest and most solemn and most all-inclusive, is the Pact of Paris. By this treaty virtually all the nations of the world have agreed to renounce war as an instrument of national policy and to seek the settlement of international differences only by pacific means.

It is not disputed that this result is of vital importance to the whole world. Indeed, if the war system cannot be eliminated, the so-called civilized nations may all be obliterated through their excessive skill in devising means of destruction. Treaties to prevent this result are so important as to warrant intensive study of the problem of ensuring that their promises will be lived up to.

The Covenant of the League of Nations proposed two types of penalties applicable to aggressor states: one was the use of armed force; the other was the use of economic pressure. It is quite clear that the United States is not ready to engage itself in advance to use force, even though this is ostensibly to maintain the peace. Our rejection of membership in the League was due, more than anything else, to dislike of the commitment assumed by League members to use force in certain contingencies. Consequently in this country, thought has particularly centered on the possible use of economic pressure to ensure that the nations will live up to their agreement to renounce war.

All this will seem naive to us who know what happened next. The American establishment—the committee was headed by Nicholas Murray Butler, president of Columbia University and of much else—had not comprehended the suicide of European civilization in World War I. After all, it had not happened to us. We saw the event as merely an interruption in ever greater progress of the Hague Peace Conferences. We had no comprehension that the First World War, as William Pfaff writes, brought about totalitarianism, a wholly new experience for mankind. The Committee on Economic Sanctions issued its report (calling for a supplementary protocol to the Pact of Paris that would deter offending nations by sanctions "as might seriously hamper its military operations and jeopardize its civil industry and trade") a year before Hitler came to power in the course of free elections in Germany. Stalin and Mussolini were already in place. The Sixty Years War that ended only last year was about to begin. In the run up to the main event, first Italy, then Japan would demonstrate that the League of Nations, at all events, was incapable of making economic sanctions deter aggression.

Even so, grant the earnest New Yorkers a measure of realism. For one thing, they knew you had to know a lot about a nation's economy to know what will hurt. Chapter after chapter describes the economies of large nations and seeks out their vulnerabilities. It is made clear that sanctions cut both ways. Thus we learn that in 1929 shipments of silk to the United States made up more than one-third of Japan's entire export trade. Cutting this off would hurt Japan. "'But again * * * sacrifice would be demanded of individuals, chiefly of the 250,000 persons employed in the silk industry, for silk is one of our large manufacturing interests."

Food presented a special case. Nothing works like famine. World War I had come to an end when northern Russia, central Europe and the Central Powers succumbed to famine or "shortage approaching famine." Not all powers are vulnerable. But then:

The possibility of * * * creating a food shortage would probably seem serious to any power of the European Continent (Russia excepted), though hardly to the island powers, Britain and Japan. We may fairly conclude that the General Staff of any country not blessed with a huge surplus would view a food blockade with concern, but that in our munitions-making list the British Empire, United States, Russia, Poland, Spain, Czechoslovakia, and probably Sweden, France, and Japan, could fight hard and long in spite of a blockade of foodstuffs.

The evidence also shows that some of the other powers, especially Italy, Germany, and Belgium, would be wholly unable to endure a food blockade. Perhaps for that reason they are unlikely to engage in war unless assured of food from some ally with a surplus. Against these countries, complete non-intercourse, including foodstuffs, would be cruelly effective.

In fact, it would be so effective that world opinion would be slow to support it. The punishment would bear most cruelly upon the non-combatants, especially upon chil-

dren. To many, a hunger blockade would seem nothing short of war of the most savage kind.

Finally, there is this passage, by Edwin C. Eckel, written by an engineer and geologist who specialized in the distribution and uses of the world's mineral resources and who was a former major of engineers in the American expeditionary force in Europe during the First World War.

FOOD EMBARGOES

Food embargoes will be extremely efficacious in some cases, and useless in others; again, the problem must be studied with reference to the particular country under punishment. But in considering them at all, we must in all honesty admit that food embargoes, placed against a country which really needs the food, are not persuasive measures, but the most savage of war measures. They are particularly difficult to uphold on merely moral grounds, since they bear more heavily on the civilian population than on the army, and more heavily on women and children than on the men. For effectiveness, and for moral standing, a really successful food embargo ranks well in advance of torpedoing hospital ships and is somewhere near the class of gassing maternity hospitals. So if a food embargo be considered an act of war, well and good. If it be considered a means of moral suasion, there seems to be some weakness in the argument.

I cite Major Eckel not to indicate any reservation as to the course of action the Security Council has taken as regards economic sanctions against Iraq. Ours is an age that has seen things as hideous as "gassing maternity hospitals." In Kurdistan, for example. But surely it is necessary to insist that what we have set about will require nerve no less than resolve.

It should also be emphasized that the Security Council has been mindful of these concerns. The United Nations has imposed two embargoes in the course of the past 46 years: Rhodesia and South Africa. Neither, however, was effective to the point that famine has appeared. The embargo of South Africa extended only to arms. But this could be brought about in Iraq.

Resolution 661, which imposed economic sanctions on Iraq, exempted "supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs * * *.

Resolution 666 recognizes that "circumstances may arise in which it will be necessary for foodstuffs to be supplied to the civilian population in Iraq and Kuwait in order to relieve human suffering * * *.

However, it also emphasizes that "It is for the Security Council, alone or acting through the [Sanctions] Committee, to determine whether humanitarian circumstances have arisen * * *.

The Security Council then decided that "if the [Sanctions] Committee, after receiving reports from the Secretary-General, determines that circumstances have arisen in which there is an urgent humanitarian need to supply foodstuffs to Iraq or Kuwait in order to relieve human suffering, it will report promptly to the Council its decision as to how much need should be met * * *.

The Council directed that foodstuffs and medicines should be provided only through "the International Committee of the Red Cross or other appropriate humanitarian agencies * * * to ensure that they reach the intended beneficiaries * * *.

It appears to be our view that in the event of actual civilian starvation the United States would not oppose foodstuffs going to Iraq. There will be a problem however, if, as is likely, Iraq refuses to allow international supervision of food distribution. Article 23 of the Fourth Geneva Convention provides that the commander of investing forces should allow passage for consignments of food intended for "children under 15, expectant mothers, and maternity cases." We may assume that the drafters of this provision had in mind the terrible sieges of World War II, most notably the 900-day siege of Leningrad.

This provision was strengthened in article 54(1) of protocol I to the Geneva Conventions (1977). As one author described the new protocol:

These vague rules of protection for the benefit of the civilian population have been greatly improved by Protocol I of 1977. This recent attempt is intended to prohibit starvation being used as a method of warfare and such regulation thus prohibits siege in the old meaning and function of the term.

The drafters of this provision may well have had in mind the Biafra conflict, 1967-70 since the prohibition on starvation as a method of war applies to internal conflicts as well as international ones. The United States, incidentially, has signed but not ratified Protocol I. American officials describe it as "quasi-law".

Let there be no doubt that the embargo against Iraq can bring about tremendous disruption short of starvation, and do so lawfully. It is within the power of the U.N. resolutions to wreck that economy and devastate that society. The power, that is, to demonstrate the force of John Norton Moore's contention that international law is far from a system of "negative restraint" telling nations what they may not do. Law, including international law, does not imply the absence of force, a point Alfred P. Rubin patiently reiterates. To the contrary, it is force exercised in accordance with prior understanding and community acceptance. My concern is that we prepare ourselves for events we have already set in motion.

It has been seven weeks since Saddam Hussein's regime invaded Kuwait. During that time the United Nations has adopted seven resolutions condemning Iraq. Six of these resolutions were approved without dissent. The seventh was approved by a margin of 13 to 2: a total of 2 negative votes out of a possible 105. The Council has acted under chapter VII, implementing a strict economic embargo against Iraq and authorizing the use of force to maintain the embargo. The President has responded to the crisis with the largest overseas deployment of United States forces since the Vietnam war.

What has not occurred during the last 7 weeks is a Senate debate on these extraordinary events. No comprehensive resolution has been introduced much less adopted. And there is every prospect that this situation will continue. No floor time has been scheduled for such a debate. Draft resolutions are around, but there seems to be no desire, much less any sense of urgency on the part of the administration that we proceed to debate the subject, as Senators HATFIELD and COHEN propose.

Some Members on both sides of the aisle are reluctant to debate a resolution. Some are concerned that any resolution on the Persian Gulf crisis would turn into a Tonkin Gulf resolution for the 1990's. At the opposite end of the spectrum are those Senators who fear that they are somehow being lured into endorsing a resolution that will be amended to include War Powers Resolution restrictions. The combination of exaggerated fears of the Gulf of Tonkin resolution and needless fear of the War Powers Resolution might be just enough to insure that no resolution at all is adopted concerning the Persian Gulf.

I say exaggerated and needless fears for such they are. Few seem to grasp just how different is this crisis from previous exercises in the use of American force. There has been nothing like it in the 200 years of tugging between Congress and the President over the constitutional contours of the war power. Five times in our history the President has acted following a congressional declaration of war. On dozens of other occasions he acted without one. This time the President has acted pursuant to the Charter of the United Nations and the resolutions of the Security Council. The Senate concurred in the ratification of the Charter. Its mandates are part of the "supreme Law of the Land." For the last 45 years the Congress has been on record, the U.N. Participation Act of 1945, as being willing to place U.S. forces at the disposal of the Security Council in a manner agreed to under article 43 of the Charter. No one in Congress can claim to be surprised to see the President acting to assist the Security Council enforce its resolutions. He is acting as the drafters of the Charter anticipated. There is nothing imperial about his conduct to date and, thus, little need to be con-

cerned about arrogations of Executive power at the expense of the Congress.

Stating these elemental facts in no manner endorses over to the President a blank check to act as he pleases. Should the President decide to act beyond the scope of action permitted by the Charter the Congress will be well within its rights to object.

The path that the President is treading is likely to be a difficult one. We are already enforcing a total embargo on Iraq. Although conditions may reach such an extreme that humanitarian relief is ultimately allowed under strictly controlled circumstances, it is entirely possible, even likely, that the embargo will endanger tremendous human suffering. To say again, an embargo which cuts off food, causes massive unemployment and paralyzes Iraq's economy is not an example of a "kinder, gentler" diplomacy.

As the human toll begins to rise, the President may well find his popularity ratings slumping and his congressional support evaporating. This will be even more the case should fighting break out. If, for example, American soldiers are shipped home in body bags because they were the victims of a gas attack, President Bush might rue his decision to forgo the opportunity to have a tangible expression of support from the Congress. How much better it would be if the Congress and the President take this opportunity to state that in this crisis we stand together in opposing this illegal invasion and enforcing the resolutions of the Security Council.

It is instructive that other nations have gathered their councils to debate these great issues. The Parliament of the United Kingdom was in recess, but on September 6 and 7 it returned to debate the response to the gulf crisis.

I urge the Senate to do likewise. The President has spoken of creating "a new world order." Have we nothing to say on such an important topic? More than 100,000 American soldiers are now in Saudi Arabia. Have we no opinion concerning whether there is any issue at stake in this crisis sufficient to justify risking their lives? I believe that we should air these great questions on the Senate floor and conclude by adopting a bipartisan resolution which would neither provide a blank check nor refight the battle of the War Powers Resolution, but would instead reaffirm the Senate's support for the principles of the Charter and its belief that the United States should assist the Security Council in enforcing its resolutions.

If we do not do this it is not difficult to foresee that very shortly now the President will be seen as having put in place a dead end policy, to use Elizabeth Drew's phrase. We will not be able to withdraw without abandoning a world coalition which we, for the most part, put together. In the course of doing so we will devastate any notion of a new world order based on the rule of law. Alternatively, there will be pressure to see what the most violent 3 to 5 minutes in recent history can do. We would almost certainly be acting on our own in such a strike, surgical or otherwise; possibly, in defiance of the Security Council. In which event, our new world order will be similarly short-lived. As Murray Kempton has written,

> The United States and its allies have plainly done as much as they sensibly can, and anything further would be dangerous nonsense in a world that for 50 years has been crying out for the peaceful resolution of disputes and, now for the first time, has a glimpse of how it could work.

My premonition, I fear it; I will hate it if it happens, is that the President himself will fail to see this. In consequence of which his extraordinary initiative will fail and his Presidency also. For he has staked his Presidency on this venture. A huge risk; now compounded by the failure to enlist the support of Congress when it can still be had.

I have one concluding thought: That the President's political operatives are caught in a time warp that makes it difficult if not impossible for them to grasp how much has changed. They observe American forces of a sudden sent off in battle gear to a distant part of the world of which we know little. This time it is a desert not a jungle, as it was last time. It was a mountainous terrain the time before that. They conclude that the President has done this on his own, as a response to a move by a Communist power, the Soviet Union or a surrogate. They assume the Senate will not now approve of this unilateral action which had to be unilateral because, they further assume, the Senate would never have approved of the action, in advance either. Therefore, hunker down, stonewall, delay. If need be, get personal. But never yield 1 ounce of Presidential prerogative. Let the ranters rant; how many divisions do they have?

From within this time warp it is impossible for the President's operatives to perceive that he has acted on wholly different grounds than in the case, let us say, of Vietnam. He is acting in accordance with the U.N. Charter and a newly professed but surely sincere commitment to international norms. Further, he has not committed our forces to combat, but rather to the maintenance of international sanctions against an aggressor nation. In each regard this is a first ever event. This escapes the President's men; rather the men who decide on relations with Congress.

Mr. President, in closing I ask unanimous consent that this morning's editorial by our distinguished colleague Senator COHEN on this subject which I quoted earlier be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 24, 1990]

ACTION IN THE GULF: GET CONGRESS TO VOTE NOW

(By William S. Cohen)

President Bush's handling of the Persian Gulf crisis is enjoying strong bipartisan support—for now. Long knives are already being drawn and sharpened concerning administration policies toward Iraq prior to its invasion of Kuwait, but that bloodletting is likely to come after the crisis either eases or is resolved. At the very least, it will come after the November elections.

In spite of the general spirit of support for the deployment of American forces to the Middle East, though, there is a good bit of muttering and kicking up of dirt on the foreign policy playing field, Congress wants to assert its constitutional role in the decision-making of war rather than be forced into a post-departum rally-round-the-flag choral assignment.

But what is Congress to do? There is a general consensus that the War Powers Act—whose purpose was to build unity at home before troops were sent abroad—has proved unworkable. Presidents neither like nor respect it. Its 60-day and 90-day deadlines for troop withdrawal are arbitrary and may only succeed in making America's adversaries bolder and more obdurate. And its provisions that permit Congress to reverse a Presidential decision without taking any affirmative action are seen as cowardly.

All of the above may be true, but it is nonetheless the law of the land. Congressional failure to insist upon compliance with the act raises serious questions about the role of Congress in the field of foreign policy and the rule of law in our lives.

Congress has rarely displayed the temerity to challenge a president who is either personally popular or whose policies enjoy popular support. It is unlikely that Congress will challenge President Bush to abide by the provisions of the War Powers Act. But the President, even in the absence of congressional demands, would be wise to place co-responsibility on the shoulders of those who are often deft at avoiding it.

With the passage of time, American citizens may become increasingly disenchanted with the notion of their sons and daughters remaining at risk in the Persian Gulf. Budget cuts for domestic programs and higher taxes (sorry, I mean enhanced revenues) are likely to generate an animus that will not respect foreign policy boundaries.

As editorial commentators from the ideologoical left and right continue to question the wisdom or need to deploy American forces abroad, members of Congress even now are starting to hedge their support with a subtle shift here, another reservation there. And should there be blood in the Saudi Arabian sands, it will come as no surprise to find Congress in full flight behind public opinion raging in a direction quite opposite from the prevailing winds of today.

President Bush would serve his own decision and America's cause well by complying with the formal provisions of the War Powers Act and asking the congressional leadership to schedule a vote in support or rejection of American forces being placed in circumstances involving imminent hostil-

ities. It would not be impossible for Congress to reverse its course later and cast stones at the Oval Office, but it would be harder for it to do so once its members formally are on record in support of the operation.

Important as these practical and political considerations are, there is a more compelling reason involved. In the past, Congress has not hesitated to turn its wrath against presidents who either subvert or seek to circumvent the law. Watergate and the Iran-Contra scandal easily come to mind. Indeed, one would need an abacus or an Apple II to count the times Justice Louis Brandeis' words—"If the government becomes a law breaker, it breeds contempt for law"—were invoked during those disquieting days.

Congress can claim no high moral ground if the executive branch chooses to flout its laws when Congress itself deliberately ignores the laws it has fashioned. If the War Powers Act is unworkable, it should be immediately modified or nullified. Until that occurs, Congress should insist upon executive compliance. To do otherwise is to invite not only a contempt for the rule of law but contempt for Congress itself.

Mr. MITCHELL. Mr. President, I have a brief statement on an unrelated matter. Then the distinguished Republican leader wishes to address still another unrelated matter. I expect to participate in colloquy with him.

THE ADMINISTRATION'S PLAN FOR THE SPOTTED OWL

Mr. MITCHELL. Mr. President, on Friday afternoon the administration announced its response to the listing of the northern spotted owl as a threatened species under the Endangered Species Act.

President Bush's plan for the spotted owl and the old growth forests of the Pacific Northwest is to exempt the owl from protection under the Endangered Species Act and to suspend environmental review of ancient forest logging under the National Environmental Policy Act and the National Forest Management Act.

Secretary Yeutter and Secretary Lujan urged in a press release that it is essential for Congress to enact quickly "legislation authorizing the immediate convening of the Endangered Species Committee."

Mr. President, that statement is not correct. It is a statement with which I disagree. No action by the Congress is necessary to convene the Committee. No legislation is essential to the convening of the Committee.

Secretary Yeutter or Secretary Lujan could start the exemption process today by submitting their proposed timber sales and land management plans to the U.S. Fish and Wildlife Service. If this consultation process finds that the proposed actions would be likely to jeopardize the continued existence of the spotted owl and fails to identify any reasonable and prudent alternatives, then an application can be filed for an exemption.

Secretaries Yeutter and Lujan recognized that no legislation was needed when they promised on June 26 that the administration will seek to convene the Endangered Species Committee, under existing law, should a Federal agency receive a jeopardy opinion from the U.S. Fish and Wildlife Service on a proposed timber sale or harvest plan.

They recognized in their own statement in June that under existing law the administration had the authority to convene the Endangered Species Committee. But, unfortunately, the administration never followed through on its commitment in June to take the Endangered Act seriously and * * * implement the law faithfully.

Instead, the administration has had 3 months to ask its own Fish and Wildlife Service whether its plan would be likely to cause extinction of the spotted owl. It has had 3 months to make a good faith effort to develop and fairly consider alternatives that would both prevent extinction of the owl, and allow continued cutting of old growth timber.

But Secretary Yeutter and Secretary Lujan apparently decided that the Forest Service and Bureau of Land Management should not allow the Endangered Species Act by initiating consultation on timber sales and forest plans for fiscal year 1991 and beyond.

Instead, the administration has spent 3 critical months trying to chart a political course around the Endangered Species Act and other Federal environmental laws.

The joint statement released Friday afternoon by Secretary Yeutter and Secretary Lujan claims that its request for legislation "would not in any way alter the substance of the Endangered Species Act." But legislation authorizing the immediate convening of the act's exemption committee would do exactly that.

The Endangered Species Act requires all Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species. Section 7(g) of the act allows a Federal agency, such as the Forest Service, to apply to the Secretary of the Interior for an exemption from this requirement.

In considering an agency's exemption application, the Interior Secretary must determine whether the agency has carried out consultation in good faith, and made a reasonable effort to develop and fairly consider modifications or alternatives to the proposed action which would not violate the act.

Any exemption application that fails to meet these threshold criteria must be denied by the Secretary. Consequently, under current law, the Cabinet-level Endangered Species Committee may only consider exempting agency actions if the Secretary determines that they have complied with the act's requirements.

The administration's requested legislation would eliminate this critical finding.

The Congress wisely chose to prevent immediate consideration of an exemption by the Endangered Species Committee unless it could be shown that there was a truly irresolvable conflict.

By forcing Federal agencies to show that there is such an impasse, the act has been remarkably successful in identifying alternatives that allow activities to go forward, while ensuring the continued existence and recovery of endangered species. It is precisely that mechanism which has caused the act to be successful that the administration now proposes to eliminate.

As a result of this act's requirement, less than 1 percent of the 48,538 biological opinions issued from 1979 through 1986 concluded that a project would be likely to jeopardize a species' continued existence. Only about 3 projects in every 10,000 were withdrawn or canceled because of jeopardy opinions issued under the Endangered Species Act during that 8-year period.

The flexibility of the Endangered Species Act already has been demonstrated with respect to the spotted owl. The U.S. Fish and Wildlife Service has concluded that none of the over 700 timber sales made this fiscal year will place the owl's existence in jeopardy, even though it found that over 91,000 acres of owl habitat will be destroyed and 667 pairs of owls will be harmed.

Given the flexibility that the Endangered Species Act has shown for the past 17 years, the administration's first response to conflict should not be to ask the Congress to exempt it from showing that an irresolvable conflict exists.

The administration says that the plan they have developed strikes a balance between conservation and economic concerns. I believe that each of us has a similar objective. But what kind of balance is there in a plan that seeks to void every major environmental law governing management of Federal forest lands?

The administration should not respond to an alarm that has been sounded by disabling the warning mechanism.

To do so would be an unforgivable dereliction of our duty to this country's natural heritage and to our descendants.

Mr. President, I yield the floor, and I invite the distinguished Republican leader to address the Senate.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

THE SCHEDULE

Mr. DOLE. Mr. President, on another matter, in my leader's time I would like to engage the Democratic leader in a colloquy about the schedule for the remainder of the week.

I think many realize, will realize we are getting very close to October 1, which is, among other things, the first of the month but also could be a sequester, and it could have an impact on millions of Americans unless we reach some agreement on the budget or unless we postpone the sequester. In addition, we need a continuing resolution to continue the Government beyond September 30.

It is my understanding, and I just ask the majority leader, we have a number of must items that must be completed prior to sundown on Friday, since Saturday is a holiday, unless we came back on Sunday. So we would have to do it prior to sundown on Friday, September 29, because the House is scheduled to recess Thursday evening and to reconvene on Monday, October 1.

The must items will be the continuing resolution; budget agreement numbers, if there is a budget agreement, as I understand it; and a sequester delay. It is also my understanding, based on our meeting last evening, the House hopes to send us a continuing resolution on Wednesday afternoon. There is some indication that would be through October 20. It will also include a sequester delay and a supplemental for Operation Desert Shield, and also in the continuing resolution, will be the budget agreement numbers, if an agreement can be reached. Then we will have to have a reconciliation bill later on to implement all these things.

Is that the understanding of the majority leader?

In addition, I would say the debt limit, I understand—we can tolerate no extension of that until October 4, but there may be some extension in the House CR on that action, too.

Mr. MITCHELL. Mr. President, it is my understanding that the House leadership has not reached a decision on each of the items identified by the distinguished Republican leader that might be included in a continuing resolution coming over here. I refer specifically to the question of whether or not there should be a delay in the sequester date absent a budget agreement. I believe the matter is still under consideration by the House leadership.

But for that one modification, I believe the distinguished Republican leader's analysis is correct. I have not had a chance to read it, but just listening to him as he describes it, I believe it is correct.

It is my hope, and this may be a vain or foolish hope, given the difficulty we have had so far, that we can soon reach a budget agreement. I have said all along that I believe the best thing we could do is concentrate our energies and efforts on trying to get an agreement. If we are able to do so, to follow the process which the distinguished Republican leader suggested in his statement, and include in the continuing resolution the aggregate limits, and do that hopefully this week in such a way that would permit us to then assess and identify the time necessary to complete implementation of the agreement in the form of a reconciliation bill, that would then follow.

Mr. DOLE. I think the point I would make to my colleague is, time is running out. We do not have much time left. The clock is ticking and we are counting down, whether or not we are going to take off, be sequestered, remains to be seen.

I agree with the majority leader. The best result would be to get an agreement. We do not have an agreement. We are going to meet again, instead of at 4, at 7 o'clock this evening, which means we will meet late into the evening, and inch a little closer.

To some it may not seem like progress, but we have made progress. We made progress last evening. But there are still several major areas yet to be resolved. Some we cannot resolve among the leadership; we have to go back to our colleagues on appropriate committees and those with jurisdictions to make certain they all agree that we might accomplish some of those items.

But it is my hope, and I know it is the majority leader's hope, because he has expressed it at every turn, that we reach an agreement. That is the best solution. Hopefully, if not tonight, no later than tomorrow night, because it is going to take some time for the House to put this together, for them to act, to send it over to us. Then I hope my colleagues, if we get an agreement, will be cooperative and let us take up a CR with a short sequester delay, and then we can go ahead with the reconciliation process maybe the following week.

One thing in the House provision I think some of my colleagues are concerned about is the extension of the CR until October 20. I think on this side of the aisle, I can say without much reservation, we hope that can be shortened at least until October 13.

Mr. MITCHELL. If I might comment on that. I think that is a widely held view on all sides of the aisle. It is my view that as soon as we can practically complete action on the budget, this session ought to come to an end so that those Senators who wish to do so and are up for reelection can return to their home States.

Again, I emphasize it may be vain or foolish, but I really think we will reach an agreement, because we have to reach an agreement, and I hope we will do it very soon. We are trying very hard.

If we do that, even meeting these deadlines will be very difficult. Failure to reach an agreement will require a whole separate colloquy with the distinguished Republican leader; unfortunately a different scenario, which I think none of us look forward to and which will be very difficult for us to get through.

Mr. DOLE. The reason I raise it, and I thank the majority leader, is because one of my colleagues asked if we will be in on Saturday. I said we could be; there may not be any votes until after sundown. We could be here Saturday working on a continuing resolution. That hopefully will not be the case, but it is possible.

Mr. MITCHELL. It is possible, and it will, as so many matters in this body do, depend upon the consent and discipline and restraint of Senators in trying to get this done. I thank my colleague, the distinguished Republican leader, for raising this issue and alerting other Members of the Senate of what will be coming up this weekend and the difficulties that are likely to exist.

THE 50TH ANNIVERSARY OF COASTAL ELECTRIC COOPERATIVE

Mr. THURMOND. Mr. President, I rise today to recognize and commend the Coastal Electric Cooperative, Inc., located in Walterboro, SC, which is celebrating its 50th anniversary this year.

Coastal Electric Cooperative, Inc. was organized in January 1940 when a group of farmers from Colleton County called a meeting of the farmers of the county at the Colleton County Court House. It was decided at this meeting to organize a cooperative to serve the people of Colleton County and the lower part of Bamberg County. The name Coastal Electric Cooperative, Inc. was adopted. Coastal's goal is to make electric energy available to its members at the lowest cost consistent with sound economy and good management. When Coastal began in 1940, members consumed 60 kilowatt hours per month; today, the average is over 900 kilowatt hours per month.

After my remarks, I would like to have inserted into the RECORD a resolution by Gov. Carroll A. Campbell, Jr., of South Carolina, recognizing the 50th anniversary of Coastal Electric Cooperative. In addition, both Mayor W. Harry Cone, Jr., of the city of Walterboro and the Colleton County Council have proclaimed the week of October 1–6, 1990 as "Coastal Electric Cooperative Week," so I would also like to include their resolutions in the RECORD. I again commend Coastal

Electric Cooperative for its service to over 8,000 consumers in Colleton, Bamberg, and Dorchester Counties and its important role in developing this area's industrial economy.

Mr. President, I ask unanimous consent that the resolutions I mentioned earlier be printed in the RECORD.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION BY GOV. CARROLL A. CAMPBELL, JR., OF SOUTH CAROLINA ON THE 50TH ANNIVERSARY OF COASTAL ELECTRIC COOPERATIVE, INC.

Whereas, fifty years ago, most of Colleton County was without electricity; and

Whereas, on May 11, 1935 President Franklin D. Roosevelt signed the executive order creating the Rural Electrification Administration; and

Whereas, the Rural Electrification Administration was designed to bring electric power into the countryside to stimulate economic growth and relieve unemployment; and

Whereas, Coastal Electric Cooperative, Inc. was first organized in February 1940 with assistance from the Rural Electrification Administration; and

Whereas, Coastal Electric Cooperative, Inc. has significantly improved the lives of more than 8,000 consumer-members in Colleton, Bamberg and Dorchester counties by providing low-cost electricity.

Now, therefore, I, Carroll A. Campbell, Jr., Governor of the state of South Carolina, do hereby recognize Coastal Electric Cooperative, Inc. on their 50th anniversary for their dedicated efforts to provide the best possible electric service at the lowest possible rates to the consumer-members they serve in Colleton, Bamberg and Dorchester counties.

CITY OF WALTERBORO,
Walterboro, SC, August 14, 1990.

A RESOLUTION

Whereas, fifty years ago most of rural Colleton County was without electricity; and

Whereas, Coastal Electric Cooperative, Inc. was organized in February, 1940 with assistance from the Federal Rural Electrification Administration; and

Whereas, Coastal Electrical has significantly improved the lives of more than eight-thousand consumer-members in Colleton, Bamberg and Dorchester Counties by providing electrical service to them.

Now, therefore, be it resolved by the mayor and city council of Walterboro, South Carolina, in council assembled, that Coastal Electric Cooperative, Inc. is congratulated on this fiftieth anniversary; and further that the week of October 1-6, 1990 is designated "Coastal Electric Cooperative Week" within the City of Walterboro to honor the cooperative, its consumer-members and employees who are working together to provide this fine service.

Done this fourteenth day of August, 1990.

W. HARRY CONE, JR.
Mayor.

COLLETON COUNTY COUNCIL,
Walterboro, SC, August 7, 1990.

RESOLUTION No. 90-R-4

Resolution Commemorating the 50th Anniversary of Coastal Electric Cooperative, Inc.

Whereas: fifty years ago, most of Collection County was without electricity; and

Whereas: on May 11, 1935, President Franklin Delano Roosevelt signed the executive order creating the Rural Electrification Administration; and

Whereas: the Rural Electrification Administration was designed to bring electric power into the countryside to stimulate economic growth and relieve unemployment: and

Whereas: the Coastal Electric Cooperative, Inc., was first organized in February 1940 with assistance from the Rural Electrification Administration: and

Whereas: the Coastal Electric Cooperative, Inc., has significantly improved the lives of more than 8,000 consumer-owner in Collection, Bamberg, and Dorchester counties by providing low cost electricity: now

Therefore, be it resolved: that the week of October 1-6 be designated "Coastal Electric Cooperative Week" to honor the cooperative, its consumer-owners, and its employees, who work together to provide the best possible electric service at the lowest possible rates.

Attest: JACQUELINE HOLMES,
Clerk.

CONSCIENCE OF KENYA

Mr. KENNEDY. Mr. President, I would like to call to the attention of my colleagues an insightful article by one of the world's leading human rights advocates, Gibson Kamau Kuria of Kenya. Mr. Kuria details the Government of Kenya's systematic refusal to honor the human and constitutional rights of Kenyan citizens advocating political pluralism.

The Kenyan Constitution guarantees freedom of expression and association and prohibits discrimination against individuals on the basis of their political opinions. In spite of these constitutional guarantees, Kenya President Daniel arap Moi has declared an end to the debate over political pluralism in Kenya and promised that advocates of multiparty democracy will be "hunted like rats."

True to his word, President Moi continues to harass, detain, and jail journalists, lawyers, church leaders, and other citizens who have advocated changes in the Kenyan political system, despite repeated expressions of concern about such practices by the United States Ambassador to Kenya.

Mr. Kuria truly represents the conscience of Kenya. He has dedicated his life, often at great personal risk, to defending individuals persecuted by the Government of Kenya. Mr. Kuria has been tortured and jailed by the Government, and in 1988 was awarded the Robert Kennedy Human Rights Award for his selfless contributions to the improvement of human rights of Kenya.

I ask unanimous consent that Mr. Kuria's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 13, 1990]

CONSCIENCE OF KENYA

(By Gibson Kamau Kuria)

A few weeks ago on this page, Bill Kovach wrote of the detention of Gitobu Imanyara, a courageous and able young lawyer who edits The Nairobi Law Monthly ["An Arrest in Kenya," July 18]. Imanyara was released a week later but rearrested on the same day and charged with sedition. He is at present free on bail, but he faces the possibility of years in prison.

Imanyara's offense? In the April/May issue of the Monthly, he ran an article called "The Historic Debate: Law, Democracy and Multi-Party Politics in Kenya." For that, he may spend six years in prison—the standard sentence for sedition in Kenya, regardless of the strength of the defense.

Kenya does not have jury trials; the magistrate in charge is a judge of both the facts and the law. Although the trial takes place in open court, the allegedly seditious passage in a document is never made public. It is seen only by the magistrate and the lawyers. From my experience defending clients accused of sedition, I am virtually certain that Gitobu Imanyara will be convicted.

Since it first appeared in 1987, The Nairobi Law Monthly has earned a reputation both within and outside Kenya for for objectivity, depth, thoroughness and feeling in its coverage of human rights and the constitution.

The Kenyan constitution guarantees freedom of expression and association, and it further ensures that no one shall be discriminated against because of his political opinions. Kenyan citizens are promised the full protection of the law and an independent judiciary. Arbitrary searches and arrests are not permitted.

The government of President Daniel arap Moi has systematically attempted to undermine the constitution since 1982, when KANU, the ruling party, introduced amendments that would replace a multi-party system with a one-party state. On June 16 President Moi, who has ruled Kenya since 1978, declared that the debate on political pluralism had come to an end and that advocates of such a system would be "hunted like rats." He instructed the police to start the hunt, and Gitobu Imanyara was one of the first to be taken.

The one-party state forced The Nairobi law journal to become the conscience of the Kenyan nation. The judicial system has been corrupted by the Moi government. Civil servants and judges serve at the pleasure of the president. Any minister who makes a principled statement may well find himself out of the Cabinet, out of the only political party and out of Parliament. Journalists, lawyers, church leaders and other citizens have been harassed or detained for advocating changes in the system.

In "The Historic Debate" editor Imanyara presents the various arguments for and against the political pluralism that threatens the Moi government's long control. Vice President George Saitoti's views are reprinted from another magazine. A second pro-government position is presented by Mark Too, KANU chairman of the Nandi District. In his introduction, Imanyara writes: "This is essentially a souvenir issue. It contains the arguments for and against the multi-party system of government. We have left out the insults and condemnations that have characterized the main argument of the proponents of the single-party form of

government. We trust that you will have an enjoyable read."

The United States and other Western nations have vigorously supported the end to one-party rule in Eastern Europe. The reluctance to support the same goal in Africa reflects a combination of Western paternalism—"Africans are not ready for democracy"—and of Western guilt—"Africans were victimized by colonial rule, so how can we tell them how to run their government now that they are independent?" It is a combination that does a disservice to the vast majority of Africans who suffer under the entrenched rule of the corrupt and brutal elite. Gitobu Imanyara, who has studied Western ideas of political pluralism, is as deserving of support as were the activists of Solidarity in Poland and of Charter 77 in Czechoslovakia when they were imprisoned for publishing similar views.

HALT AID TO ZAIRE

Mr. CRANSTON. Mr. President, last May, the slaughter of about 300 Zairian University students at the hands of President Mobutu's personal guard went virtually unnoted in the United States. In recent months, human rights groups such as Africa Watch, Amnesty International, and the Lawyers Committee for Human Rights confirmed reports that the massacre was a punitive action against student demonstrators who had called for political reforms earlier in April.

Research Director Richard Carver, speaking on behalf of Africa Watch, called the massacre:

A brutal indication of how far the Mobutu regime is prepared to go to silence its critics. This incident casts serious doubt on the Government's announcement last month that it would embark on a course of limited liberalization.

Corruption and repression in Zaire have risen to intolerable heights. Analysts report that large portions of foreign aid are diverted to the Government's deep pockets, never to resurface. Studies show that only 3 percent of the national budget is spent on health and other human services in Zaire, and that the people there have come to rely on private voluntary organizations for the basic services which the Government has failed to provide.

It is shocking that Mr. Mobutu is reported to be one of the wealthiest men in the world, while the average annual per capita income in Zaire is about $200. The standard of living in Zaire has dropped since Mobutu took power in 1965.

The international community has not looked lightly upon the recent events and trends in Zaire. After the May massacre, the Governments of Belgium and France, as well as the European Community, condemned the violence and called for an investigation. The Government of Belgium suspended preparations for an economic cooperation agreement between the two countries. The Government of France suspended a series of discussions for the planned 1991 summit of French speaking nations, to take place in Zaire.

The World Bank will no longer issue nonproject loans to Zaire. Bank officials and the Zairian Government have been unable to reach an agreement on a spending program. The World Bank held on to its position that more money needed to be spent on education and other programs to promote economic growth in Zaire. The World Bank has indicated that funds will not be disbursed until Mr. Mobutu spends more on health, education, and other public services.

Mr. President, it is time for United States policy toward Zaire to take a turn. Our support of the Mobuto regime must stop. We can no longer close our eyes to Zaire's deplorable human rights conditions. Mr. Mobutu should not be rewarded with the $56 million—the highest level of U.S. aid to any African nation—that the administration has requested.

The House foreign operations bill for 1991 responds to the atrocious conditions in Zaire. The House language calls for the end of foreign military assistance to Zaire in 1991. It also requires that all other foreign aid to Zaire be channeled through private voluntary organizations. At present, at least 20 percent of United States foreign aid successfully reaches Zairians through such organizations.

I believe that only a firm measure such as the House proposal will indicate to Mr. Mobutu that his practice of repression and flagrant human rights abuses will not go unheeded.

I urge my colleagues on the Appropriations Committee to consider seriously the House language when preparing the foreign operations bill. I also urge that future bilateral United States aid to Zaire be conditioned on demonstrable progress by the Zairian Government in providing its citizens with their basic rights.

I ask unanimous consent for certain articles to be published in the RECORD.

There being no obligation, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 17. 1990]

ZAIRE DOESN'T DESERVE THAT AID

(By Makau wa Mutua)

(The writer is head of the Africa Project of the Lawyers Committee for Human Rights.)

In mid-May, Zairian security forces stormed the campus of the University of Lubumbashi. According to several recent reports, these soldiers massacred at least 300 unarmed students. One member of the government's Garde Civile who was at the campus that night says that he counted 347 bodies as they were being evacuated from the university grounds by government agents. Some of the victims were reportedly buried in a mass grave near the local airport.

Several days later, Assistant Secretary of State for Africa Herman Cohen arrived in Zaire. Without even mentioning the violence at Lubumbashi, he told reporters that the United States would direct its future foreign aid toward "emerging democracies, such as Eastern Europe, Zaire and some other African countries."

Cohen's ill-timed and inappropriate support for the Mobutu government is sadly characteristic of U.S. policy toward Zaire for the past 25 years. Equating pronouncements of reform in Zaire with the sweeping changes in Eastern Europe was particularly troubling, coming as it did in the immediate aftermath of the Lubumbashi killings. Regrettably, Cohen's noisy diplomancy is only the most recent example of the administration's failure to exert needed pressure on President Mobutu. In 1984, barely a year after Zairian security forces brutually attacked several opposition politicians following their meeting with visiting U.S. congressmen, Assistant Secretary of State Elliott Abrams told a congressional committee that "human rights conditions in Zaire had improved over the last 20 years." Dismissing these and other acts of violence by Zaire's security forces, Abrams implored Congress to provide more aid to the of government Zaire.

Several months later, Mobutu was treated as an honored guest by President Reagan. Reagan gave Mobutu a "warm welcome" and praised him as "a faithful friend for some 20 years." Responding to criticism of the administration's negative handling of the human rights issue in Zaire, Assistant Secretary of State Chester Crocker asserted that "it was wrong to characterize Zaire as a brutal police state." Rather he suggested that "abuses that do occur tend to be committed at the lowest level by individuals acting on their own, without sufficient training or material support." In 1986, Reagan renewed his unqualified praise for Mobutu, calling him "a voice of good sense and goodwill."

This misguided U.S. approach to Zaire has continued during the Bush administration's first 18 months in office. Mobutu was the first African leader received by President Bush at the White House in June 1989. The administration has requested that Congress provide Zaire with $56 million in military and economic aid for FY 1991, citing Zaire's support of various Western policies.

What this policy ignores is a prolonged and systematic pattern of institutionalized abuses of human rights in Zaire. Since Mobutu came to power in 1965, Zaire's security forces have continued to routinely harass, arrest, detain and abuse perceived political opponents. Thousands of Zairians have been tortured, subjected to cruel treatment and prolonged incommunicado detention, actions that have led to a total breakdown in the rule of law.

Official bodies created to protect the rights of Zairian citizens—specifically, the courts and a government human rights ministry called the Department of Citizens Rights and Liberties—have failed to carry out their mission. The judiciary has been plagued by interference from Zaire's sole political party, the Movement Populaire de la Revolution, and from the executive branch. Despite annual pronouncements of reforms for more than a decade, Zaire's judiciary has not punished the security forces for arbitrary arrests and illegal detentions.

The DCRL, which was formed in 1986 to promote and protect human rights, lacks the credibility, authority and political will to redress abuses. It has not resolved a single human rights case since its creation.

Instead, it has been used cynically by the government to defend the government's human rights record before international tribunals such as the United Nations.

In April, Mobutu announced his intention to abolish the one-party state and to sanction a three-party political system. But Mobutu clearly asserted that he would remain as chief of state and as the "ultimate recourse" for future governments of Zaire. He also emphasized that he would remain above all state organs even if a multiparty government were allowed. Since the announcement, Mobutu has failed to take any steps to reform the security forces, which are the main perpetrators of human rights abuses.

Soon, the U.S. Senate will decide whether the administration's request of $56 million in aid to Zaire should be granted. The Senate vote provides an excellent opportunity for the U.S. government to make it clear that in the post-Cold War era, allies like Zaire must demonstrate concrete progress in human rights before further U.S. aid is forthcoming.

[From the New York Times, Apr. 21, 1990]

WHY BANKROLL AFRICA'S CEAUSESCU?

Mobutu Sese Seko seized power in Zaire through a military coup in 1965, the same year Nicolae Ceausescu became the Communist boss of Romania. Mr. Mobutu is no Communist. But his methods of rule resemble those of the executed Romanian tyrant. Wholesale repression, corruption and megalomania have deformed Zaire.

There is a further regrettable resemblance. President Mobutu, like Mr. Ceausescu, has known how to profit from his outspoken opposition to Soviet foreign policy moves. Washington has winked at his disastrous misrule and made his regime the leading African recipient of United States economic assistance.

The end of the cold war removes any possible justification for this taxpayer subsidy to a repellent dictator. Representatives Howard Wolpe of Michigan, Stephen Solarz of New York, David Obey of Wisconsin and Ronald Dellums of California are proposing changes in the aid relationship. Their efforts deserve support.

American aid dollars have not measurably helped Zaire's people. Annual per capita income is about $150; living standards are lower than when Mr. Mobutu took power. His government has not built a single hospital in its 25 years. Only 3 percent of Zaire's budget goes to health and education while 23 percent goes to the military and 50 percent to "political institutions."

Meanwhile, Mr. Mobutu's personal fortune has, by some estimates, grown to $6 billion. His holdings include perhaps a dozen French and Belgian chateaus, a Spanish castle and a 32-bedroom Swiss villa. Mr. Mobutu protests that his fortune is a mere $50 million, and that none of it has come out of the pockets of his people. But recent World Bank studies have found hundreds of millions of dollars in mineral revenues unreported in the national budget, and more gold and coffee smuggled out of the country than legally exported.

Mr. Mobutu has supported anti-Communist initiatives of successive U.S. Administrations, especially in Angola. But he has done so for his own reasons, not always in coordination with Washington. For him the U.S. has proved a useful alley. He uses his conspicuous access to American leaders to further discourage dissent.

Mr. Solarz, Mr. Wolpe and Mr. Obey would end military aid to Zaire and channel most economic aid through non-government organizations. Mr. Dellums would go further and press international aid institutions to consider the abuses and corruption in Zaire. Americans have better uses for their tax dollars than reinforcing the Mobutu tyranny.

DEL WEBB CORP. ENDS 44-YEAR HISTORY

Mr. REID. Mr. President, one of the most significant chapters in the history of legal gaming in Nevada closed on September 30, 1990, when the Del Webb Corp. ended a 44-year history of involvement with the gaming industry. That date marked completion of the sale of the High Sierra Casino, the last of eight casinos that had been owned and operated by Webb.

Webb began its involvement with the Nevada gaming industry as a general contractor, constructing the Flamingo Hotel and Casino in Las Vegas in 1946. The Flamingo established the pattern for what is now the Las Vegas Strip, which is famed worldwide as the leading gaming center in the world.

Webb later was involved in the construction of the Mint Hotel, the Sahara Hotel and Casino, Caesars Palace, the Las Vegas Hilton, the Sahara Reno, Nevada Club, the Riviera Hotel and Casino, the Aladdin Hotel and Casino, and the High Sierra. The Sahara, completed in 1951, was the first high-rise casino-hotel in our State. The Mint, completed in 1961, was the first skyscraper in Nevada.

In 1961, Webb became the first major public company to be involved in the ownership of Nevada casino-hotels when it acquired the Mint, the Sahara, and the Lucky Casino. Webb subsequently acquired and operated the Thunderbird, the Primadonna, the Nevada Club, the Sahara Reno, and the High Sierra.

Webb was the first casino operator to install overhead closed circuit television cameras to monitor gaming for the protection of the licensee and the public, which was only one of the gaming industry innovations contributed by Webb. Another innovation was the use of professional sports events, such as the Gold Cup hydroplane races on Lake Mead and the PGA Sahara Invitational, to make Nevada a tourist destination.

By 1972, Webb had become the largest gaming operator in Nevada as well as its largest private employer. Webb became a respected spokesman for the gaming industry and played a major role in the improvement of the statutes, regulations, and policies that governed it.

When I served as Nevada's Lieutenant Governor, I had a good association with Del Webb. Some of my fondest memories involve dinner at the Governor's mansion with Del Webb and Gov. Mike O'. He was not only a baseball fan, but a Nevada booster as well.

Today, Webb no longer has a presence in construction or in gaming in Nevada. However, it continues to be one of our State's most valued corporate citizens. Under the leadership of Philip J. Dion, its chairman and chief executive officer, Webb has made a remarkable transition into a national leader in the development of active adult communities.

The newest of the Webb adult communities is Sun City Las Vegas, which is located in southern Nevada. Sun City Las Vegas held its grand opening in January 1989 and has set sales records ever since, under the direction of General Manager LeRoy C. Hanneman, Jr. Among its awards was Builder of the Year from the Southern Nevada Home Builders Association.

Webb believes Nevada has the ingredients, including lack of a State income tax, low property taxes, and accessibility to natural and manmade attractions, to make active adult communities a major factor in the continued development of the State.

Although Webb's role in Nevada has changed, Mr. Dion has made clear to me that Webb's commitment to the State and its citizens is undiminished.

I wish to congratulate the Del Webb Corp. on the completion of over four decades of achievement in the fields of construction and gaming and I extend best wishes to Webb and Philip J. Dion for continued achievement as a developer of active adult communities and as a responsible corporate citizen in Nevada.

WILL ASSAD BE ANOTHER SADDAM?

Mr. DECONCINI. Mr. President, Secretary of State Baker met last week in Damascus with Syria's President, Hafez Assad. It was a private meeting, with only Baker, Assad, his Foreign Minister, our Ambassador to Syria, and translators in attendance. During the meeting, Assad assured Secretary Baker that Syria is prepared to send additional troops to Saudi Arabia. If the Saudis formally request those troops, and apparently they have. On its face, this is a positive response from an Arab nation in the international effort to pressure Saddam Hussein to withdraw from Kuwait.

I do not need to remind you, Mr. President, or any body else, exactly who is President Assad. He is a very shrewd individual with an historic sense of himself and his destiny. This is the man who sent his armed forces into Lebanon in 1976 and aided in the destabilization of that war-ravaged Nation. President Assad currently maintains nearly 40,000 troops in Lebanon. During my visit with him last

year, he expressed his view that Lebanon is part of Syria because the people of Lebanon and the people of Syria are the same people. That was what he told me.

Mr. President Assad is also an active sponsor, supporter, and host of international terrorism. The history of the 1980's is littered with evidence that his government has been involved in and associated with acts of terrorism. Assad's government is widely believed to have been behind the assassination of political leaders in Lebanon, as well as being implicated in terrorist attacks against Americans there, including the bombing of the Marine Corps barracks in Beirut. Syria has been an active supporter of radical elements within the PLO, including the popular front for the Liberation of Palestine. Assad's intelligence agents and diplomats have been linked to terrorist attacks on Jordanian officials. The media has also reported that Italian investigators found evidence of direct Syrian involvement in the attacks on the Rome and Vienna airports in December 1985 and Great Britain charged in a court action that the Syrian Government was behind the plot to put a bomb aboard an Israeli El Al passenger plane in London in January 1986. Finally, we cannot forget the bombing of the Pan Am 103 over Lockerbie, Scotland in December 1988. While Syria has apparently not been directly linked to the bombing, those responsible appear to have been provided safehaven in Syria from which this horrible crime was launched.

Mr. President, I am pleased that news accounts of the Baker-Assad meeting report that the issue of terrorism was a major topic of the discussions. President Assad must hear this message loud and clear: We will make common cause with him to oppose Iraqi aggression, but we will not overlook or ignore the major impediments to normalization of relations between our two countries.

We only need look at the path which has led us to this point in the Persian Gulf to realize that we must be cautious, extremely cautious, in our dealings with Assad. Throughout the 1960's and 1970's, successive administrations—both Republican and Democrat—followed a policy of unwavering support for one individual, the Shah of Iran. Driven by a fear of communism and a need for oil, we chose to ignore the many problems of the Shah's rule, including his disregard for human rights, and the rise of Islamic fundamentalism. His flight from Iran and subsequent death brought our policy to a tragic end. The subsequent regime of the Ayatollah Khomeni, fueled by anti-American sentiment, encouraged the taking of American hostages and promoted the image of the United States as the great satan. Not only did our policies in Iran destroy a Presidency, they established a precedent for hostage taking which other adversaries have eagerly followed.

The Ayatollah thus replaced communism as the evil of the day. Our policy seemed to become one that said: "Whoever is an enemy of Iran is a friend of the United States." This started the downward spiral of the Reagan and Bush administrations' turning a blind eye to Saddam's excesses and abuses. In 1982, Iraq was taken off the State Department's list of international terrorists. It became eligible for a fuller range of U.S. trade and credits.

The Washington Post reported that in 1983, Iraq's foreign minister met with then-Secretary of State George Shultz and said, "We want help from you."

Because Iraq was engaged in a war with Iran, the United States was willing to quietly assist the Iraqis. In 1984, the Iraqi Ambassador, Nizar Hamdoon, and others reportedly met secretly with CIA Director Casey to receive satellite reconnaissance photos which assisted Iraqi military planners in their bombing raids against Iran. Additionally, since 1985, the Commerce Department has approved 485 export licenses to Iraq for various technologies which it assured were not going to be used for military purposes. The Commerce Department, in its zealous desire to expand markets, had processed all but 160 of them before the August invasion.

This is but one example of the holes which our own Government has knowingly or unknowingly punched in the missile technology control regime [MTCR]. The United States and its allies, many of whom have joined the MTCR, have pursued profits over principles. They have sold to Iraq, through third parties and dummy and front corporations, the weapons and technology by which Saddam has been able to terrorize his neighbors. This technology was sold even after the "butcher of Baghdad" gassed thousands of innocent and defenseless Iraq kurds. The West sold him the weapons which are now trained on American men and women in the desert.

Reports indicate that Iraq has obtained missile technology from Brazil, electronic guidance systems from France, tools to build missile bodies and components from Britain, and solid fuel and missile propellants from Belgium. The Post reports that Iraq can produce up to 70 tons of chemical warfare agents per year. This capacity is expected to increase in the 1990's.

Finally, various experts claim that Iraq has, or soon will obtain, the capability to place nuclear warheads on its ballistic missiles. These missiles, fitted with chemical, biological, or even nuclear warheads, would place practically the entire Middle East at risk.

We knew that Saddam was obtaining this technology and these capabilities. Our intelligence experts told the Commerce Department, the State Department, and the Defense Department that Saddam was a very real threat to the United States, its interests, and regional stability. Yet it was the British who prevented the American-made nuclear triggering devices from being exported to Iraq—not our own Commerce Department. the Bush administration sent assistant Secretary of State John Kelly up to the Hill to tell Congress that sanctions against Iraq, "would hurt U.S. exporters and worsen our trade deficit." Columnist Jim Hoagland wrote that the President asked some of our Senate colleagues to express support for Saddam during their trip to Baghdad in April. Only days before the Iraqi invasion, the United States ambassador to Iraq, April Glaspie, told Saddam Husssein that we did not have a defense pact with Kuwait and had "not opinion on the Abab-Arab conflicts, like your border disagreement with Kuwait." This left Saddam with the distinct impression—as if he needed any prompting—that the United States would not intervene if he moved against Kuwait.

He was wrong, Mr. President, very wrong. But so was our policy of appeasement toward Saddam.

Now we are talking with Assad. We hear about a new era of moderation from Syria. The Christian Science Monitor reports that some U.S. officials are talking with hope about a "Cairo-Damascus-Riyadh Axis" to act as a new force for moderation in the gulf.

Mr. President, we must be cautious in our dealings with Assad. We must be certain that we do not try to win his support by subverting our principles. We must not find ourselves in the position of offering to sell Syria weapons to ensure that it acts as we would like it to act. If other countries want to sell Syria weapons, let then sell Syria weapons. We must not attempt to buy Assad's cooperation.

Let our able Ambassador in Damascus deal with Assad. That is what Ambassadors are for. There may be areas in which our mutual interests converge, such as the present situation in Iraq. But there are many other areas where we disagree. We must never lose sight of these disagreements and these principles.

Our policies must reflect our national interests and our national principles. We must never forget that we have relations with nations, not with individuals. We were friends with the Shah, but his country turned against us. We supported Saddam, but Iraqi troops now face American troops. We will have to deal with the Soviet Union long after Gorbachev is gone. We

must be very alert in our dealings with Assad.

Former U.N. Ambassador Jeane Kirkpatrick has prophetically warned that our past policies may "lead us to become more entangled with Hafez Assad than is either necessary or desirable." I strongly agree. She goes on to say that, "international politics may sometimes justify or even require an alliance with unpalatable leaders or regimes. It never justifies asking unreasonable risks of a democratic ally such as Israel or forgetting that the United States permanent interests lie with democracy and democracies."

Mr. President, I urge President Bush to exercise extreme caution in his dealings with Assad. History has demonstrated that prudence in these actions is imperative.

Mr. President, I ask unanimous consent that an article from today's Wall Street Journal entitled "Washington would be smart to keep the Syrian government at arms's length," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 24, 1990]

WASHINGTON WOULD BE SMART TO KEEP THE SYRIAN GOVERNMENT AT ARM'S LENGTH

(By Walter S. Mossberg)

WASHINGTON.—Just as the U.S. is coming to grips with the consequences of years of cozying up to Iran, it risk heading down the same path with another of the world's bad actors—Syria.

When Secretary of State James Baker met with President Hafez Assad in Damascus recently, his purpose was to bolster the U.S.-led effort against Mr. Assad's long-time foe, Iraq's Saddam Hussein.

That may have been a reasonable tactical maneuver in a big crisis. But unless the sudden warming of relations with Syria is carefully contained, it could well embolden that country's ruthless regime, just as Iraq was strengthened by the support it won from Washington during its war with Iran. Iraq's invasion of Kuwait demonstrates the hazards of setting aside long-term considerations in favor of building ties to enemy's enemy.

Already, there are troubling signs of a softening of U.S. attitudes toward Syria on the most important issue separating the two nations—Syrian support for terrorists who have killed hundreds of Americans over the past decade.

"There are still problems revolving around this question of terrorism," Mr. Baker blandly said at a Damascus news conference that the Assad regime had packed with sullen secret police trying to look like journalists. He then gave the floor to Syria's foreign minister, who blamed the media in the West" for "exaggerating the terrorism issue in our region."

President Assad, for his part, pleaded with Mr. Baker that he was being unfairly branded as a backer of terrorism.

How could the U.S. expect him to help solve the Pan Am Flight 103 bombing case, Mr. Assad asked, when the Central Intelligence Agency and the Federal Bureau of Investigation were refusing to provide him details of their investigation? If he had hard evidence, Mr. Assad said, he'd be willing to put on trial in Syria the Damascus-based terrorist the U.S. blames for the atrocity, the Popular Front for the Liberation of Palestine-General Command.

Mr. Baker apparently took this request seriously. He told reporters: "There is . . . a disagreement between us on the sufficiency of the evidence. We will work to resolve the disagreement." Last week, meetings began here among U.S. officials to see what more about the case could be told to Mr. Assad.

In the past two years, Mr. Assad has taken pains to quieten his public role in terrorism, much as Iraq did in the early 1980s. Syria also had tried to curry favor here by "facilitating" the release of U.S. hostages in Lebanon.

But Mr. Assad isn't an innocent by-stander, a landlord with an open mind whose country happens to house a few killers. According to U.S. intelligence officials, he has been an active backer of terrorists who kill Americans. In fact, they believe he is far worse on this score than Saddam Hussein.

"I've been around long enough to recognize the need for democratic societies to make temporary alliances with unsavory regimes for immediate military advantage," says Rep. Tom Lantos (D., Calif.). "But I particularly caution the State Department not to portray President Assad of Syria and the Syrian regime as an ally. That regime in terms of its recent history is no less bloodthirsty, no less brutal . . . than the bloodthirsty regime of Saddam Hussein.

The Syrian government created, and still controls, the Popular Front for the Liberation of Palestine-General Command—the group believed to have planted the bomb that went off on the Pam Am Flight as it flew over Lockerbie, Scotland, in December 1988, murdering 270 people, including 189 Americans. The group's leader, Ahmad Jibril, is a former Syrian army captain who is believed to report to Syrian intelligence officials close to Mr. Assad.

U.S. intelligence believes Mr. Assad already has all the datailed evidence he would need against the PFLP-GC. The group is thought to have bombed the Pan Am airliner under contract to Syria's ally, Iran, with Syrian permission.

The leader of the cell that is thought to have assembled the bombs for the Pan Am attack entered Germany before the bombing on an official Syrian passport. And that cell leader, Hafez Dalkamoni, is under indictment in Germany for trying to blow up two U.S. troop trains there. If he had succeeded, he would have slaughtered hundreds of the same U.S. soldiers with whom Syrian troops now stand shoulder to shoulder against Iraq.

And that isn't all. Throughout the 1980s, Mr. Assad helped Iran organize the Shiite terrorist network that took U.S. citizens hostage and staged the 1983 bombing of the U.S. Marine barracks in Lebanon that killed 241.

The intelligence and counterterrorism arms of the U.S. government are resisting turning detailed information on Pan Am 103 over to Mr. Assad because that might enable him to find out how much they know about the bombing and how they learned it. They fear such information would soon be in the hands of the terrorists themselves, who could use it to improve their security.

The counterterrorists also are loath to see the PFLP-GC tried in the friendly confines of Damascus instead of in Scotland, where the crash occurred. But it remains to be seen whether they will be able to resist State Department pressure to compromise with Mr. Assad.

TRIBUTE TO JOHN A. DANAHER

Mr. LIEBERMAN. Mr. President, I rise today to honor the memory of the Honorable John A. Danaher, an important figure in the legacy of public service in the State of Connecticut.

John Danaher, who passed away on Saturday, September 22, served the people of my State, and this Nation, as a prosecutor, a secretary of state, a U.S. Senator, and a justice of the U.S. Circuit Court of Appeals.

His long and distinguished career began at the early age of 23, when he was selected to be a Federal prosecutor in Connecticut. From 1935 to 1938, he served as secretary of state for Connecticut. In 1938, he was nominated by the Republican Party to run for the U.S. Senate, and he went on to win in November of that year.

John Danaher ran unsuccessfully for reelection in 1944, but his loss did not detract from his desire to serve the public interest. Giving credence to the saying that "there is life after death in politics," Danaher became a judge and developed a reputation as an honorable and fair man, one who was adept at settling legal conflicts.

President Eisenhower appointed John Danaher to the U.S. Circuit Court of Appeals in 1954. He became so highly regarded in that position that he was a serious contender for the vacancy on the U.S. Supreme Court that was filled by William J. Brennan. Judge Danaher's tenure on the appellate court continued for decades, and he retired in 1980 on the same day that he swore in his grandson as an attorney in the Federal courts in Connecticut.

Mr. President, John Danaher's life exemplified the best traditions of government service in Connecticut. He was a selfless man whose primary interest was in contributing to the welfar of the people of his State and this Nation. He helped to fashion laws as a Senator, enforce them as a prosecutor, and interpret them as a judge. There is an old saying that goes, "Justice in the life and conduct of the State is possible only as first it resides in the hearts and souls of the citizens." Justice did, indeed, reside in the heart and soul of John Danaher, and we are the better off for it.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

U.N. PARTICIPATION ACT OF 1945

Mr. CRANSTON. Mr. President, I see Senator BRYAN is on the floor who will be handling the CAFE standards.

I would like to take a moment to comment on the remarks of the Senator from New York. In his usual penetrating way, he has applied his mind to a very serious matter before the whole world, the United States, and this body, the U.S. Senate. He is very correct, I think, in stating that the important act to consider is the U.N. Participation Act of 1945, more than the War Powers Act. We hope to avoid war. We hope to develop an international law and reign of peace in this world. I simply want to state that I look forward to working as hard as I can with the Senator from New York to see that we do all we can to promote the new world order, based upon world law that the President and the Senator from New York have spoken of.

The Senator from New York has just wrote a very forceful, persuasive, and eloquent, well-reasoned book on the matter of international law between nations. He is now following through in the U.S. Senate on that theme. I look forward to working with him.

A major point he made is that Congress has not been adequately involved in the decisionmaking relating to the gulf. I said the other day on the floor, "However strong and true American hearts are in this matter, there is a gnawing feeling that perhaps a vital component has been left out of this international effort. The missing ingredient is quite simply Congress."

I look forward to working with the Senator to see that Congress is involved in a very constructive way in these affairs.

Mr. MOYNIHAN. Mr. President, if I could respond to our revered deputy majority leader and whip and call the attention of the Senate to the fact that Senator CRANSTON also has raised the question of the U.N. Participation Act of 1945. The President has, in fact, so far, in conducting our affairs, acted precisely as it was contemplated the President would act.

When the U.N. Charter was drawn, when President Roosevelt described it to the world and to the Nation, and when the statute was put in place, it was specifically contemplated, for example, that the Security Council would have available forces which it could commit to situations such as the gulf crisis, if they should arise. These forces should have been made available pursuant to an agreement between the United States and the Security Council, which agreement would have been approved here in the Congress. That never happened.

In the forties, it turned out Stalin was not going to go along. We have reason to think that downtown there is an apprehension that any action or debate by this Senate would revive all the stalemated problems of the War Powers Resolution. They need not do so. Indeed, they ought not do so, in the view of this Senator, if we are going to proceed and give the President the support he now needs. He can get it now, and 6 months from now it may be unattainable, and he shall have ruined an enormous initiative. They ought to consult their hopes. If they have been bold enough to go to the Security Council, they can be bold enough to come to the U.S. Senate.

Thank you.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Nevada is recognized.

STAR PRINT OF EXECUTIVE REPORT NO. 101-31

Mr. BRYAN. Mr. President, I ask unanimous consent that there be a star print of Executive Report No. 101-31 to reflect the changes which I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHILDREN'S TELEVISION ACT

Mr. BRYAN. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 715, H.R. 1677, regarding the Children's Television Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1677) to require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2713

(Purpose: To make an amendment in the nature of a substitute)

Mr. BRYAN. Mr. President, I ask for the immediate consideration of a substitute amendment by Senators INOUYE, HOLLINGS, and WIRTH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN], for Mr. INOUYE (for himself, Mr. HOLLINGS, and Mr. WIRTH), proposes an amendment numbered 2713.

Mr. BRYAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Children's Television Act of 1990".

TITLE I—REGULATION OF CHILDREN'S TELEVISION

FINDINGS

SEC. 101. The Congress finds that—

(1) it has been been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

(2) as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children;

(3) the financial support of advertisers assists in the provision of programming to children;

(4) special safeguards are appropriate to protect children from overcommercialization on television;

(5) television station operators and licensees should follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience; and

(6) it is therefore necessary that the Federal Communications Commission (hereinafter referred to as the "Commission") take the actions required by this title.

STANDARDS FOR CHILDREN'S TELEVISION PROGRAMMING

SEC. 102.(a) The Commission shall, within 30 days after the date of enactment of this Act, initiate a rulemaking proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to the time devoted to commercial matter in conjunction with children's television programming. The Commission shall, within 180 days after the date of enactment of this Act, complete the rulemaking proceeding and prescribe final standards that meet the requirements of subsection (b).

(b) Except as provided in subsection (c), the standards prescribed under subsection (a) shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(c) After January 1, 1993, the Commission—

(1) may review and evaluate the advertising duration limitations required by subsection (b); and

(2) may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest.

(d) As used in this section, the term "commercial television broadcast licensee" incldes a cable operator, as defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

CONSIDERATION OF CHILDREN'S TELEVISION SERVICE IN BROADCAST LICENSE RENEWAL

SEC. 103. (a) After the standards required by section 102 are in effect, the Commission shall, in its review of any application for renewal of a television broadcast license, consider the extent to which the licensee—

(1) has complied with such standards; and

(2) has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) In addition to consideration of the licensee's programming as required under subsection (a), the Commission may consider—

(1) any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and

(2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.

PROGRAM LENGTH COMMERCIAL MATTER

SEC. 104. Within 180 days after the date of enactment of this Act, the Commission shall complete the proceding known as "Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations", MM Docket No. 83-670.

TITLE II—ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

SHORT TITLE

SEC. 201. This title may be cited as the "National Endowment for Children's Educational Television Act of 1990".

FINDINGS

SEC. 202. The Congress finds that—

(1) children in the United States are lagging behind those in other countries in fundamental intellectual skills, including reading, writing, mathematics, science, and geography;

(2) these fundamental skills are essential for the future governmental and industrial leadership of the United States;

(3) the United States must act now to greatly improve the education of its children;

(4) television is watched by children about three hours each day on average and can be effective in teaching children;

(5) educational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees and permittees or cable television system operators do not have the economic incentive; and

(6) the Federal Government can assist in the creation of children's educational television by establishing a National Endowment for Children's Educational Television to supplement the children's educational programming funded by other governmental entities.

NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

SEC. 203. (a) Part IV of title III of the Communications Act of 1934 (47 U.S.C. 390 et seq.) is amended—

(1) by redesignating section 394 as section 393A;

(2) by redesignating subparts B, C, and D as subparts C, D, and E, respectively; and

(3) by inserting immediately after section 393A, as so redesignated, the following new subpart:

"Subpart B—National Endowment for Children's Educational Television

"ESTABLISHMENT OF NATIONAL ENDOWMENT

"SEC. 394. (a) It is the purpose of this section to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

"(b)(1) There is established, under the direction of the Secretary, a National Endowment for Children's Educational Television. In administering the National Endowment, the Secretary is authorized to—

"(A) contract with the Corporation for the production of educational television programming for children; and

"(B) make grants directly to persons proposing to create and produce educational television programming for children.

The Secretary shall consult with the Advisory Council on Children's Educational Television in the making of the grants or the awarding of contracts for the purpose of making the grants.

"(2) Contracts and grants under this section shall be made on the condition that the programming shall—

"(A) during the first two years after its production, be made available only to public television licensees and permittees and noncommercial television licensees and permittees; and

"(B) thereafter be made available to any commercial television licensee or permittee or cable television system operator, at a charge established by the Secretary that will assure the maximum practicable distribution of such programming, so long as such licensee, permittee, or operator does not interrupt the programming with commercial advertisements.

The Secretary may, consistent with the purpose and provisions of this section, permit the programming to be distributed to persons using other media, establish conditions relating to such distribution, and apply those conditions to any contract or grant made under this section. The Secretary may waive the requirements of subparagraph (A) if the Secretary finds that neither public television licensees and permittees nor noncommercial television licensees and permittees will have an opportunity to air such programming in the first two years after its production.

"(c)(1) The Secretary, with the advice of the Advisory Council on Children's Educational Television, shall establish criteria for making contracts and grants under this section. Such criteria shall be consistent with the purpose and provisions of this section and shall be made available to interested parties upon request. Such criteria shall include—

"(A) criteria to maximize the amount of programming that is produced with the funds made available by the Endowment;

"(B) criteria to minimize the costs of—

"(i) selection of grantees,

"(ii) administering the contracts and grants, and

"(iii) the administrative costs of the programming production; and

"(C) criteria to otherwise maximize the proportion of funds made available by the Endowment that are expended for the cost of programming production.

"(2) Applications for grants under this section shall be submitted to the Secretary in such form and containing such information as the Secretary shall require by regulation.

"(d) Upon approving any application for a grant under subsection (b)(1)(B), the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of the project for which the grant is made.

"(e)(1) The Secretary shall establish an Advisory Council on Children's Educational Television. The Secretary shall appoint ten individuals as members of the Council and designate one of such members to serve as Chairman.

"(2) Members of the Council shall have terms of two years, and no member shall serve for more than three consecutive terms. The members shall have expertise in the fields of education, psychology, child development, or television programming, or related disciplines. Officers and employees of the United States shall not be appointed as members.

"(3) While away from their homes or regular places of business in the performance of duties for the Council, the members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with 5703 of title 5, United States Code.

"(4) The Council shall meet at the call of the Chairman and shall advise the Secretary concerning the making of contracts and grants under this section.

"(f)(1) Each recipient of a grant under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this section, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such grant, the total cost of the project, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to a grant received under this section.

"(g) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this section, including those relating to the order of priority in approving applications for projects under this section or to determining the amounts of contracts and grants for such projects.

"(h) There are authorized to be appropriated $2,000,000 for fiscal year 1991 and $4,000,000 for fiscal year 1992 to be used by the Secretary to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year shall remain available for contracts and grants for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year.

"(i) For purposes of this section—

"(1) the term 'educational television programming for children' means any television program which is directed to an audience of children who are 16 years of age or younger and which is designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children; and

"(2) the term 'person' means an individual, partnership, association, joint stock company, trust, corporation, or State or local government entity.".

(b) Section 397 of the Communications Act of 1934 (47 U.S.C. 397) is amended—

(1) in paragraph (2) by striking "subpart C" and inserting in lieu thereof "subpart D"; and

(2) in paragraph (15)—

(A) by inserting "and subpart B" immediately after "Subpart A"; and

(B) by striking "subpart B, subpart C" and inserting in lieu thereof "subpart C, subpart D".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2713) was agreed to.

Mr. BRYAN. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, a short time ago, both the Senate and House passed legislation concerning children's television programming—legislation that we have been working on for the past two Congresses. Since these two bills differed, we have been meeting with our House colleagues to work out the differences without convening a formal conference. I am delighted to announce that we have now worked out all differences and are ready to proceed to pass this legislation through the Congress and send it to the President.

Before discussing the substitute, let me thank Chairmen DINGELL and MARKEY and the ranking member of the Telecommunications Subcommittee, Mr. RINALDO, for their cooperation in resolving the differences in the legislation.

The changes we are considering today to H.R. 1677—in the form of an amendment in the nature of a substitute—make only minor changes to the Senate-passed legislation. These changes only affect title II of the legislation, the National Endowment for Children's Educational Television. The provisions on broadcaster obligations in title I are unchanged from the Senate-passed bill.

The substitute revises title II, the National Endowment for Children's Educational Television, as follows:

First, it permits the Secretary of the Department of Commerce to either award grants directly or contract with the Corporation for Public Broadcasting to actually select the persons who shall receive the grants to produce programming. Should the Secretary contract with the CPB, the CPB will be bound by the criteria governing the award of any grants, established by the Secretary.

Second, it requires the Department of Commerce to maximize the amount of programming produced with the Endowment funding and minimize costs incurred in selecting the grantees.

Third, it reduces the authorization level for fiscal year 1991 from $10 million to $2 million and authorizes $4 million for fiscal year 1992.

As stated above, the substitute does not change the provisions that require the FCC to consider at renewal time whether the licensee has met the educational and informational needs of children in its programming and impose limits on the amount of time that can be devoted to commercials during a children's television program. The legislation is not intended to restrict the FCC's ability to exercise its discretion at renewal time with regard to enforcement of licensees' compliance with rules and policies. For example, the Commission may consider the good faith efforts of licensees toward compliance, including the adoption of policies to adhere to the guidelines and their development of reasonable methods to ensure compliance.

In closing, H.R. 1677 will increase the educational television programming available for our children, programming which we desperately need. I again urge my colleagues to support this important measure.

Mr. HOLLINGS. Mr. President, I am here today to urge support for H.R. 1677 and the amendment in the nature of a substitute for H.R. 1677 offered by Senator INOUYE. This legislation represents years of work by Members of this body and the House of Representatives. I thank Senator INOUYE for all of his work.

The legislation is designed to ensure that television programming aimed at our children is responsive to their needs and interests. It also limits the amount of time that can be devoted to commercials during children's programming. In view of the educational crisis this country faces today, we must do all we can to enhance and increase the educational material to which our children are exposed.

In addition, the substitute provides for the establishment of an endowment for children's educational programming. The endowment provides funding for educational and informational children's programming. The programming produced with the assistance of the endowment ultimately will be available to anyone who wants to air it, including broadcast stations, cable systems and schools. This program also will further the important educational interests of our children and enhance the educational function of children's television programming.

I believe that the legislation represents a giant step forward for our Nation's children. Our responsibility today is to enact this legislation to protect our children and enhance their educational opportunities. I urge my colleagues to support H.R. 1677, as amended.

Mr. WIRTH. Mr. President, I have been concerned with the state of children's television in this country for many years. Television is a unique medium that offers incredible opportunities to enrich the lives of America's children. Virtually every developed country in the world devotes more resources than we do on educational television for children. In contrast, our broadcasters often ignore the child audience or offer cartoon programs that are principally designed to promote toys to children. We can do better than this. Indeed, we must do better if we expect America's youth to enjoy the same opportunities to learn from television as children from countries where television is used more wisely as an educational resource.

Senators HOLLINGS, INOUYE and I are offering a substitute amendment to H.R. 1677—previously S. 1992—that reflects a new agreement on the National Endowment for Children's Television, the single issue on which the House- and Senate-passed bills differ. I am pleased that this agreement has been reached, allowing the legislation to move forward.

Importantly, the substitute amendment does not in any way alter the licensing provisions included in title I of the legislation passed by the Senate on July 19. Under the renewal standards included in this legislation, each television licensee must provide at least some educational programming specifically designed for children in order to qualify for license renewal. This requirement is unequivocal. Senator INOUYE and I discussed this requirement in a colloquy on July 19. The substitute amendment does not affect the substance of that colloquy which remains an accurate description of the license renewal standards.

Finally, licensees must also adhere to appropriate limits on the amount of commercial content presented during children's programming, an area in which FCC deregulation has led to abuses of the child audience. Commercial content will be limited to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays, again unchanged from the legislation approved by the Senate in July.

This amendment provides for meaningful reform and improvement in children's television. The legislation is a substantial accomplishment, and heralds a major shift in the way television will address America's children. Broadcasting in this country remains a privilege, not a right, and those who hold that privilege reap substantial economic benefits. With the enactment of this measure, we can soon expect America's broadcasters to meet the very specific obligation of serving the educational needs of America's children. Now that we have reached an agreement on the programming endowment, I hope we can swiftly send the legislation to the President. I urge

my colleagues to join me in supporting this important measure.

Mr. DANFORTH. Mr. President, I am pleased to support the substitute amendment that Senator INOUYE is offering today to H.R. 1677, the Children's Television Act. This measure is only slightly different than S. 1992, which the Senate passed in July. It limits the time that can be devoted to advertising in all children's television programming. The bill also requires the Federal Communications Commission to determine, in broadcast license renewal proceedings, whether the television broadcaster has served the educational and informational needs of children in its programming. Finally, it establishes a national endowment to fund educational children's television programming.

This measure includes my amendment to apply the advertising limits to children's programming on cable television. Children do not distinguish between cable and over-the-air broadcasts when they watch television. This provision ensures that they will be protected from excessive advertising from either source. As the courts have long held, children are a special class, deserving of special protections.

This legislation serves the interests of children without imposing unreasonable burdens on broadcasters and cable operators. Therefore, I recommend its immediate passage.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 1677), as amended, was passed.

Mr. BRYAN. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOTOR VEHICLE FUEL EFFICIENCY ACT

The ACTING PRESIDENT pro tempore. The hour of 10:30 a.m. having arrived, the Senate will resume consideration of S. 1224.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1224) to amend the Motor Vehicle Information and Cost Savings Act to require new standards for corporate average fuel economy, and for other purposes.

The Senate resumed with the consideration of the bill.

Mr. BRYAN. Mr. President, we begin debate this morning on S. 1224, the corporate average fuel economy bill, and we do so at a time in which we have more than 150,000 American men and women in our armed services either on land, in the gulf, or on the sea, as it immediately surrounds that area. So when the question arises why we are debating CAFE now, and why is it significant and what is the importance of it, I think that we need to underscore the importance of what the past few weeks have revealed in a high profile way to all Americans.

That is, as the President pointed out in his joint address to the Congress some days back, we import too much oil. We are heavily dependent on foreign sources for the oil that we consume in this country. Although many of us are supportive of the President's policy in the Middle East, and I reaffirm my support for that policy this morning during the course of this talk, very clearly, I think none of us in this Chamber, or none of our constituents across this land, are unmindful of the fact that were it not for our enormous dependence on overseas oil, we would not have 150,000 men and women in our armed services in the Persian Gulf. We are heavily dependent, and our situation, Mr. President, has deteriorated.

In 1973, when the Arab OPEC oil embargo first hit this country, Americans were shocked, they were stunned; gas lines formed and prices soared, and for the first time we realized how dependent we were upon imported oil.

In that distant year, 1973, we imported about 37 percent of the oil that we consumed in this country, and learning as we did, at that time we thought that was far too much; we should never again put ourselves in a position where we are so dependent.

The fall of the Shah of Iran sent another shock wave through the economy of this country and again the price of gas rose rather dramatically and curtailment strategies were developed, and there were concerns in many parts of the country whether indeed we would have enough fuel available for day-to-day usage.

Many of us recall those long lines, particularly on Sunday when a relatively few retail service stations were open, and in which it was very, very difficult to get gasoline on Sundays. Well, those events of the 1970's passed and we forgot all the lessons that we had begun to learn.

The Congress of the United States in the 1970's responded courageously and responsibly in considering how can we reduce our dependence on overseas oil, what conservation strategies make sense. Among them, hearings were held in 1974, as the occupant of this Chair will recall, and the Congress adopted CAFE, corporate average fuel efficiency, for the first time. At that time we were only importing 37 percent of our oil. Today we import 50 percent of our oil.

What was the effect of that CAFE legislation? There have been suggestions in earlier colloquys on the floor, that somehow all of the policies of the 1970's were misguided, that they were mistakes, that indeed we do not want to revisit that era again. Mr. President, CAFE was a remarkable success, an extraordinary success, and a great tribute to the men and women who served in the Congress during that period of time, the occupant of the Chair included, because at that time the national fuel economy average for our automobile fleet was about 14 miles per gallon.

That legislation required incremental improvements during the course of a period of time to virtually double that fuel efficiency from 14 miles per gallon to 27½ miles per gallon. There were naysayers, particularly in the auto industry, that said it could never be done, that this was beyond the capabilities of our scientific community, that there simply was not the ability to do so, and there were all kinds of prophetic doom and gloom prophesies that it simply could not be done. In fact, Mr. President, it was done.

Remarkably it was done. And as a result there is a permanent built-in savings each day of 2½ million barrels of oil per day. That is a great success.

Unfortunately, we did not continue to move with updated versions of the mandated fuel economy standards of the 1980's, and on at least two occasions as I recall during that decade a waiver was given which permitted the automobile industry to fall back from achieving the full impact of the mandated benefit of 27½ miles per gallon.

So we are here on the floor this morning, Mr. President, to talk about a logical extension and a continuation of the CAFE standards or mandated fuel economy standards of the 1970's and contrary to some of the statements which I have heard and which have been bandied about the chamber that somehow this is a knee-jerk reaction, that is a panic, that all of this was conjured up in the aftermath of the events of August 2.

Let me dissipate that notion and set the record straight. More than a year ago the Consumer Subcommittee of the Commerce Committee began hearings and, Mr. President, those hearings preceded the introduction of this legislation, S. 1224. We sought input from the automobile industry, we sought input from consumers groups and others as to what could be achieved with the technology that today is available, that is off the shelf, and assuming for the sake of argument the ludicrous possibility that the Patent Office literally closed the

doors, that no new technology would be introduced in the decade ahead.

It was the considered judgment of the committee after hearing testimony that a 20-percent fuel economy improvement by the year 1995 and a 40-percent fuel economy improvement by the year 2001 was achievable with a technology that was then available, and it could be implemented by the auto industry in a timely period.

The auto industry did not like the notion of CAFE. They pretty much gave us a replay of what we had been treated to in the 1970's. But there were a couple points they made, a couple points that my distinguished colleague, Senator GORTON, from Washington State, who participated in the drafting of this piece of legislation from its inception, made. They said,

Look, rather than take us up so much each year, which had been done in the 1975 version, set a series of plateaus; give us time to develop and work the technology into that legislation.

I thought that seemed reasonable, so we did do that. We set 1995 as the first tier to give the industry time to develop the model lines and to program into the vehicles coming out in that year the necessary changes to achieve the first tier, which is a 20-percent fuel improvement, or to take us to 34 miles per gallon by the year 1995.

The second tier we put in an out year, even further out there, in the year 2001, and 40 percent was the number that the evidence that we received during the course of those subcommittee hearings indicated was achievable, and we said,

Look, the industry should be able to reach the 40 percent standard by the year 2001 and that will take us to 40 percent standards by the year 2001 and that will take us to 40 miles per gallon.

Finally, the distinguished Senator from Washington and myself looked at this, and we said, nobody can say with the view of a clairvoyant precisely what that technology will be, although we believe it to be a most conservative estimate, using the technology that is on the shelf today, just pull it off, design it into the automobiles of the future, and we can achieve those. We said,

Look, let us give the Secretary of Transportation the ability to grant a waiver not to exceed 10 percent if indeed because of circumstances totally unforeseen at this time the standard could not be achieved.

Now, it has been argued and suggested that this bill provides no immediate relief; in fact, some have said to the sponsors of this bill: "Do you think that the crisis in the Middle East is going to last for 8 years, 9 years, 10 years, to the year 2001?" That is when the second tier phase becomes fully effective. I think all of us would hope that that is not the case.

But I must tell you, Mr. President, seeing the front page of the Washington Post this morning, this unstable, self-aggrandizing leader of Iraq threatens to destroy oil fields in the Persian Gulf if Iraq itself is not only subject to attack, but he said, "Look, if the going gets too tough, if the noose is tightened too greatly, if my people endure too much hardship."

That is something that ought to frighten all of us, because clearly, we know that he has the missile technology and capability of reaching those oil fields outside of Iraq and Kuwait on which we depend, as does much of the world, for a great portion of its imports.

But the point to be made here, is that there is a benefit to be gained immediately, and that is the automobile industry will have a target and a policy to pursue, because in just the past 2 years we have seen a deterioration of the standards that have been reached in 1980. For example, from 1988 to 1990 we have seen a decline in the domestic automobile fleet in terms of fuel efficiency of 4 percent. Clearly I think everybody would agree that that is the wrong direction. We have seen an increase in weight of 6 percent. We have seen an increase in horsepower, the so-called muscle cars, that is the cars that emphasize that they can get you from zero to 60 in just a flash of an eyelash.

As distressing as this trend is with respect to the domestic industry, let me tell you with respect to our Asian imports, the news is even worse.

The Asian fleet fuel economy has declined by 6 percent in the past 2 years, weight has increased by 9 percent, and the horsepower has increased by 22 percent. Clearly, if we are going to have any kind of a rational policy as it deals with energy conservation, those kinds of developments must be arrested and brought to a stop immediately. And that is what this legislation does. It sends a message to the industry, and says: Look, these are the targets. This is what you have to do. And we are establishing as a matter of policy, that the new technology that you are putting into these automobiles needs to be focused on conservation, not enhanced horsepower offerings and performance that emphasizes the acceleration rates which one can achieve with that new technology.

Now in the first 6 years, Mr. President, of the implementation of this legislation, from 1995 to the year 2001, we save 49 billion gallons of gasoline—49 billion gallons of gasoline. And by the year 2005—that is when the two tiers become fully effective—we will achieve a permanent savings, permanent each and every day, of 2.8 million barrels of oil.

Now to put that into some kind of context that we can relate to in light of the Persian Gulf crisis that has set the oil market into the ionosphere, oil prices now are $35 a barrel. That is more than twice what they were in the weeks that preceded the August 2 invasion. It has threatened our economy.

There is concern that this just may be the propelling force that could cause this economy to slip into a recession. All of us hope that that will not be the case, but none of us can be unmindful of the fact that we clearly are seeing the economy evidence signs of a slowdown, and there are massive amounts of money being taken literally out of the hand of the consumer as the price of oil and gas at the pump have increased by 20 to 25 cents a gallon in the period of time since August 2.

Here is what that 2.8 million barrels of oil that we save a day would amount to. That is roughly four times, Mr. President, what we were importing from Kuwait and Iraq prior to the Middle East developments of August 2. Prior to that time, we were importing from Kuwait and Iraq combined into the United States about 730,000 barrels of oil a day. We get permanent savings by the year 2005 of about 4 times that amount, or 2.8 million barrels a day.

Mr. President, there is also a benefit that I would like to comment on, and others during the course of the day will add to that, but all of us have been concerned about the environment. The news has not been altogether encouraging.

Whether one fully subscribes to the impact of the global warming theory, I know of no scientist, Mr. President, none, who would tell us that it is not in our best interest to reduce the amount of the carbon dioxide emissions into the atmosphere. Every one, I believe, agrees that that ought to be a goal. Many believe, and I think it is fair to say that the preponderance of scientific evidence would indicate that there is a global warming effect believed to be taking place, and all would acknowledge that carbon dioxide is the principal, largest greenhouse gas. We save in the first 6 years of this legislation some 483.5 million tons of carbon dioxide that we take out of the environment.

I would say that this is another compelling public policy argument of taking action now, this year, before this Congress adjourns.

Let me just say a couple of words about feasibility. It has been argued by industry and its supporters that where it may be desirable to achieve full savings that we outline in this bill, the technology is simply not there. It cannot be done. It just cannot be done. It is beyond our capabilities; beyond our capabilities.

Well, Mr. President, you will recall, having been a part of that debate back in the seventies—I just want to read one or two of these—that in 1974,

General Motors testified that this legislation, referring to the first round of mandated fuel economy legislation, the very bill that was passed by the Congress would have the effect of placing restrictions on the availability of five- and six-passenger cars, regardless of consumer needs or intended use of the vehicle.

Mr. President, I suggest with the greatest respect we are going to hear a great deal about that, that in effect if this piece of legislation before us, S. 1224, is enacted, it is the death knell of the five- or six-passenger family sedan and family classes of vehicles will be limited and, in effect, everybody is going to be driving around in a tiny automobile.

Ford testified at that same time in 1974–75, that this proposal, again referring to the first congressional proposal for mandated fuel economies, would require a Ford product line consisting of either all sub-Pinto sized vehicles or some mix of vehicles ranging from a sub-subcompact to perhaps a Maverick. And then Chrysler, completing the testimony of the Big Three, predicted that in effect this bill will outlaw a number of engine lines and car models, including most full-size sedans and station wagons.

Mr. President, that just did not happen. That just did not happen. To the credit of the industry—and I think we ought to compliment them—they were able to design the technology that today we do have, under the law passed by Congress in 1975, a full-sized choice of vehicles. The six-passenger vehicle is there, just as it was prior to the 1975 enactment. So I would respectfully suggest that it is deja vu when one hears these arguments that were advanced more than a decade ago.

The basis for our conclusion that the technology is available relies upon the Environmental Protection Agency and its testimony before the committee. It involves testimony from some highly respected experts—and I suspect that we will get involved in debating whether the expert conclusions are supportable or justified—from a host of experts engaged by the Department of Energy itself and by others, including the Office of Technology Assessment, all of which conclude that achievements at this level can in fact be reached within the timeframe suggested in the outlines of this bill.

And so to conclude, Mr. President, I argue and suggest strongly to my colleagues that this legislation was carefully put together. Without the help of my friend and colleagues on the floor, we would not have been there. And I acknowledge publicly his support and cooperation, and acknowledge the cooperation and support of the Chair, who serves as chairman of the full committee.

But it was very carefully considered. This is not something rash or hasty or a knee-jerk, thoughtless reaction, a headline grabbing attempt to take advantage of the Persian Gulf crisis. The distinguished Senator from Washington and I have known each other for many years. I consider him one of the clearest thinkers in the legislature. But I do not believe we could import to him or to anybody else that in May of last year, when this legislation was crafted, that he or anybody else could have anticipated the series of events that unfolded in the Middle East. We did not. But, frankly, he and I were both concerned about the energy dependency that this country has grown almost riverted to, and it is increasing rather dramatically; and also the environmental concerns that are of concern to this Congress and to each of us.

So I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, this morning, while eating breakfast with the radio on, I heard an advertisement sponsored by a group calling itself the Automobile Manufacturers Association, asserting that the Bryan bill—in this advertisement they created the bill to my distinguished friend from Nevada—was a "death on the highways" bill, in that it would have no real impact other than to increase the highway death rate.

We have on our desk, in addition, a letter from the Secretary of Transportation opposing this bill on the basis stated by the Secretary of Transportation that the only way by which the goals of the bill could be reached would be weight reductions and downsizing of passenger cars and light trucks and that that would result in increased deaths on the highways.

Mr. President, that idea might have more force and more validity were it not for two undisputed factors, both arising, of course, out of the fact that a bill exactly like this one was passed a decade and a half ago designed to increase the average fuel economy of car fleets from what was then less than 14 miles per gallon to a figure approximately twice that.

The distinguished Senator from Nevada has already shared with Members of the Senate some of the comments made in the early 1970's by automobile manufacturers with respect to requirements which they fought as vehemently then as they are fighting this bill today. I will repeat only one of them, and this is a direct quote from the opposition of the Ford Motor Co. in 1974. That company states:

This proposal—

That is to say the original CAFE law—

would require a Ford product line consisting of either all sub-Pinto-sized vehicles or some mix of vehicles ranging from a sub-subcompact to perhaps a Maverick.

We hardly need to go out into one of the parking lots to look at automobiles with a Ford name tag on them to understand that that statement was a wild misrepresentation. The qualities of the engineers at Ford and the other companies surmounted those challenges and met the present standards without having to do anything remotely comparable to what they claimed in 1974 they would have to do.

As a consequence, the statement on this radio commercial by the Automobile Manufacturers Association that these standards could only be met by sharp downsizing and a considerable worsening in safety standards is simply not believable.

But, let us go to those safety standards themselves and let us look at a similar comparison. In 1975, when Congress passed the original CAFE law, the average new car made 13.8 miles per gallon. By last year that had more than doubled to 28 miles per gallon. What had happened to the automobile fatality rate? In 1975, it was 3.6 death per 100 million vehicle miles traveled. In 1989 it was 2.2, reduction, Mr. President, of 39 percent.

The combination of these two facts shows far better than can any debate on the floor of the Senate that we have the genius in the United States to improve both fuel economy and auto safety at the same time.

If, in fact, the arguments of the Secretary of Transportation and the automobile manufacturers had been accepted in 1974, we would not be using some 2.5 million gallons of gas per day more than we are at the present time. We would be in a serious crisis rather than a significant inconvenience. We are unlikely, Mr. President, to substantially decrease our dependence on foreign sources for petroleum products while we manufacture, for all practical purposes, all of our automobiles to be run on gasoline. As a consequence, we better do something rather considerable and rather dramatic to reduce our use, or our use per vehicle, while we search for an alternative which does not use gasoline at all or which uses mixtures which are not entirely dependent upon gasoline.

One of the interesting elements of this entire debate, Mr. President, is that we have not listened to a sentence on the floor of the Senate nor have we seen anything from any of the opponents which deprecate the desire for greater auto fuel efficiency. It is a goal sought to all.

The Secretary of Transportation, for example, in his news release opposing this bill says:

The administration favors market incentives to reduce gasoline use. We want to increase fuel efficiency, but we must approach

it in a prudent way that does not reverse safety advances.

We have sure had some market incentives to reduce gasoline use in the course of the last 6 weeks. They have come through sharp increases in the cost of gasoline. It may be that some, including the auto manufacturers and perhaps the Secretary of Transportation, would like to free market us up to $2 or $2.50 a gallon gas, which probably would have pretty much the impact of this bill. I submit that that is not the desirable way in which to reach these goals. Calling on our auto manufacturers to use their intelligence and their genius to create automobiles which save money rather than simply to increase the cost of gasoline seems to this Senator to be far, far preferable.

In addition, of course, the Secretary of Transportation, while giving lip service to increased fuel efficiency, has stated his implicit view that the only way in which one obtains it is by downsizing of automobiles. Under those circumstances, he should logically be against increased fuel efficiency in its entirety. But he is not. Why? Because he recognizes, as do others, that it is not necessary to downsize automobiles to reach the goals which are set in the bill sponsored by the distinguished Senator from Nevada and myself. Study after study after study has reached the conclusion that we can reach these goals without downsizing. Our own Office of Technology Assessment, this administration's Environmental Protection Administration, a Lawrence Berkley Laboratory report, this administration's Department of Energy as recently as this year, the International Institute for Energy Conservation, all have shared with us their views that technology, some of which is presently in use and available and the balance of which is clearly attainable between this year and the year 2000, can reach these goals for us.

Mr. President, the goal of auto fuel efficiency, the goal of energy independence for the United States, the goal of continued technological innovation, the goal of discouraging the use of muscle cars—which at high speeds are far more dangerous to their own occupants and to others on the highways than can be the case with any automobile conforming to these standards—these goals are vitally important for the people of the United States.

At this point, Mr. President, we feel it vitally important to use the graphic lesson of energy dependence placed upon the backs of the American people by the Iraqi invasion of Kuwait to cause a serious debate on this bill, and we surely trust its passage.

As the distinguished Senator from Nevada has already said, he and I worked on and introduced this bill early last year. The committee, chaired by the distinguished occupant of the chair, passed that bill earlier this year by a vote of 14 to 4. All of these decisions were made before the present Mideast crisis, but interest in this subject has clearly been enhanced by that crisis, just as the original CAFE bill was triggered by an earlier Arab oil boycott.

This is an opportunity which we should not miss, Mr. President. We should be debating at this point not whether or not we should have increased and better standards, but simply what those standards ought to be. For the balance of this day, Mr. President, I understand we will be dealing with amendments to this proposal. In many respects, the Senator from Nevada and I welcome and encourage those amendments.

There are several on the list which we have seen with which we are likely to agree, or at least can modify so that we do agree. But many of the amendments, Mr. President, are simply designed to see to it that no bill passes at all and that responsibility for ignoring necessity for increased auto efficiency can be so diffused so as not to be aimed at any given individual.

Particularly significant among these are a series of amendments which we will get, which will, in effect, say: We should not do this unless we do a whole lot of other things as well. If we are going to require automobiles to increase their efficiency, every other user of energy should be required to increase his, its, her efficiency at the same rate and at the same time. If we are going to pass this, we must pass other legislation, whether relating to speed limits or the like, at the same time.

Mr. President, as is generally the case, that counsel of perfection is, in effect, counsel to do nothing at all. This is the single most important step we can take to demonstrate our serious concern about energy independence. It does not mean that it is the only step that we can take.

It is perfectly appropriate to propose other and additional methods by which to increase our energy—or to decrease our energy dependence. But to say that we cannot pass this bill unless we deal with every single challenge we face is simply to say we will never face any of those challenges. This is the time, this is the place, this is the opportunity for the Congress of the United States to say we are serious about the challenges we face in the world; we are serious about the dependence of the United States on foreign oil; we are serious about doing something about it.

Mr. RIEGLE. Mr. President, suddenly we are worried about our energy supply again. And there is much to be concerned about.

Our domestic supply of oil is falling. The Department of Energy says that in the first 235 days of this calendar year the amount of oil produced in the United States fell 5.4 percent from the same period as last year. Domestic production of oil peaked at 11.3 million barrels per day in 1970. It has been falling ever since. Last year even Alaskan oil production turned downward. We're now producing, according to the Department of Energy, about 7 million barrels per day of crude oil, a loss of more than 4 million barrels per day from our alltime high.

Yet, our consumption of oil has generally been rising after it bottomed out in 1983, in the wake of stiff price increases. The result is that we are importing more oil. According to the DOE, in the first 235 days of 1990, our net imports of petroleum, both crude and refined product, rose 8.5 percent from the level during the same period of the previous year.

In the first quarter of 1990, net imports—imports minus exports—of petroleum crude and refined product were 45 percent of our total supply. That is 7.7 million barrels per day. In terms of gallons, we are importing 323 million gallons per day of petroleum. Note that the highest dependence we have ever had was in 1977 at 46.5 percent. So we are very close to breaking or all time record for dependence on foreign oil. The proportion of our oil imports from Arab OPEC is rising rapidly. In the first quarter of 1990 we were importing 2.4 million barrels per day from them.

When we look at a geological map, we see that well over half the crude oil reserves in the entire world are located in the Middle East. About one-quarter of world's natural gas reserves are located there. As our domestic oil supply declines, it isn't hard to see where we will have to turn for more imported oil.

And of course, I haven't said anything about other forms of energy such as electricity. Many believe that we face a future crisis in having adequate electrical energy supply. Some say that the energy crisis of the 1990's will not be gasoline lines, but instead electrical brownouts.

But of course, all these problems existed before Iraq invaded Kuwait. It was the invasion of Kuwait and the threat of the invasion of Saudi Arabia that have jolted us into a serious look at our energy supply. Iraq has bot four times the oil reserves of the entire United States. Kuwait, which Saddam Hussein illgally annexed, also has about four times the oil reserves of the entire United States. Had he successfully attacked and conquered Saudi Arabia he would have controlled an oil empire having 18 times the oil reserves of the United States. And he would have held the throat of the Western World in his grasp.

Before the Iraqi invasion, we saw some vague connection between our energy security and our national security. Now there is no doubt. Now, Americans who led comfortable lives as private citizens are sweltering in the Saudi desert as reservists called to active duty. Fathers have left families and even mothers have left their families to answer the call of duty.

Let's fact it. Energy policy has been neglected until recently. The last comprehensive energy legislation enacted was the National Energy Act in 1978. After Jimmy Carter, energy policy just faded away. The Reagan administration rejected the notion of energy planning. They rejected energy conservation as a serious instrument of government for addressing our energy security.

The Reagan administration even proposed abolishing the Department of Energy altogether. Energy Secretary Edwards, the former dentist, said he wanted to bury the DOE and salt the ground over. They probably would have, except that someone discovered that the DOE was where nuclear weapons were made.

Consider the man chosen to head the Energy Information Administration in the Reagan administration. He testified before a House subcommittee prior to his confirmation. He said that he thought the Government should not collect any energy information because if we did, the Government might be tempted to use it to regulate.

Our energy policy in the 1980's seemed to be that we were going to produce our way out of our energy dependence. The free market would solve the problem, we were told. Well, we took that route, perhaps not as fast as the Reagan administration would have liked. But we deregulated oil and eventually natural gas. We abolished, or allowed to wither, much of the Government's energy apparatus that had been put in place during the 1970's.

But, Mr. President, ideology holds no sway over geology. We simply have drilleed our oil reserves much more intensively than anyone else in the world. And conservation has faltered.

What happened? By the end of Mr. Reagan's term, in fact in the last week of his Presidency, he formally declared in a message to Congress that imports of foreign oil threaten to impair the national security. So much for producing our way out of our energy dependence.

Fortunately, Mr. President, the Bush administration parted company with the Reagan administration on the subject of energy planning. Within 5 days of his Senate confirmation, Secretary Watkins issued a memorandum for all department and contract employees. One of the "near-term issues" he listed as requiring his "immediate attention" was: "commencing development of an integrated national energy strategy * * * highlighting reestablishment of conservation as a key component."

This was a welcome change from his predecessors. In attempting to put together a national energy strategy or NES, the DOE has held more than 15 hearings across the country with more than 375 witnesses. The plan is for the DOE to submit their NES options to the President in December of this year. As I understand it, the President will submit his NES to Congress as part of the fiscal year 1992 budget. That was the plan even before the Iraqi crisis.

I wish the NES could have been assembled sooner. Hopefully, current events will expedite it somewhat. But better late than never, considering the neglect of the prior administration on energy policy.

In the meanwhile, we have been formulating national energy policy by default. When we passed the Clean Air Act earlier this year, there was a national fuels policy embedded in it. Make no mistake about that. Much of our environmental legislation has been deciding energy policy by default.

So, Mr. President, there is a lot of frustration among my colleagues about energy policy right now. I feel it. You each feel it. We're sending a couple of hundred thousand troops to defend the Mid-East oil fields, and we don't even have a current energy policy in place.

We are under a lot of pressure to make up for the time wasted in the 1980's, to find the first opportunity to vote for a bill to show we want a tough energy policy. It does not much matter what the bill is, just whatever is in the pipeline to the floor right now.

That would be a mistake, Mr. President, a serious mistake because that isn't creating a national energy policy, it is just running scared. What we sought to do is insist that the United States have a sensible national energy policy.

What should be done then, Mr. President? Well, look at what Congress did in the past two energy crises. Soon after each of them, Congress passed comprehensive energy legislation.

Well, what kind of legislation do we need? Well, first, it's got to be comprehensive. It can't just cover one sector of the economy. Not just transportation. You can't ignore the industrial sector. After all, the industrial sector uses more energy in total in the United States than does the transportation sector. So does the residential and commercial sector. We can't look just at oil supply. We have to cover electricity, natural gas, all the major forms of energy—if we want adequate energy supplies for a competitive economy.

An energy policy must cover all the sectors. And a national energy policy must be considered all together, not piecemeal.

And Mr. President, formulation of a national energy policy must involve the President as well as the Congress. We should have learned well during the Reagan years that Congress can't force an energy policy on any President. We went to the extraordinary extent in the early 1980's of mandating on appropriations bills minimum staffing levels at certain DOE R&D offices to prevent the Reagan administration from sacking the talented people. In the final analysis it didn't work.

The legislation on energy we really want must include energy conservation as well as energy production. We aren't going to produce our way out of our energy dependence. Not in my lifetime. Not with oil. The current decline in our domestic oil production is just too steep.

And we cannot expect to get there with energy conservation alone. We cannot just ignore opportunities for improving domestic energy supply.

Finally, a good national energy policy must be directed to both the short term and the long term. What good does it do to address an imminent threat of an oil supply problem with a bill that does not have any direct effect on our energy situation for 5 years?

We should be insisting on a national energy policy that has these characteristics:

Is comprehensive, include all sectors of the economy, and all major forms of energy supply;

Involves the administration in formulating it;

Addresses conservation as well as production; and

Addresses the short term as well as the long term.

I think this is what many of my colleagues really want here today. They want a chance to say it's time for the United States to put together a comprehensive national energy policy.

I am offering an amendment to the pending bill that will enable us to say what we really want to say—we need a national energy policy, not a partial surrogate.

The fact is, we are entitled by law, not just by circumstances in the Mideast, to have the opportunity to consider a national energy policy plan.

Let me explain.

When Congress created the Department of Energy in the DOE Organization Act of 1977, we included a title VIII entitled, "Energy Planning." Under that provision the President is required to submit to Congress every 2 years, beginning on April 1, 1979, a proposed national energy policy plan. Title VIII is a step-by-step prescription for how a national energy policy

should be drawn up and what must be included in that plan.

In fact the Reagan administration never submitted a proposal that complied with the requirements of the act. They didn't believe in energy planning, so they never did it the way the act required. They sent us bits and pieces of legislation to enhance oil production and to repeal most of the energy legislation in then-current law.

The Reagan administration has been soundly criticized for their failure to comply with the law, for their failure to send Congress a comprehensive national energy policy plan.

We should not be guilty of the same infraction. We would if we voted on a national energy policy piecemeal, without waiting for the President to give us a good, comprehensive proposal. After a decade, the President is about to send us at last a national energy strategy. Why shouldn't we follow the procedure of the act. That doesn't mean of course we cannot revise what the President sends us. Clearly, title VIII expects us to review and revise the NES.

My amendment is a sense-of-the-Senate resolution on the need for a national energy policy plan.

So, it would declare that it is the sense of the Senate that the President should submit, as the law requires, a proposed national energy policy plan. This is something the President has already committed to do, except he calls it a national energy strategy.

How soon must he do it? My amendment says he should do it within 6 months of date of enactment. That is, we don't expect him to drop everything at the moment he's doing with respect to getting Saddam Hussein out of Kuwait. But once the crisis passes, or even once it cools down to a static situation, the President should send Congress his NES.

That does not mean, of course, that the Congress must accept the President's NES and the proposed legislation to implement it. The current law is very clear. Congress should review and revise the NES, the national energy policy plan, as necessary, including the implementing legislation.

Mr. President, I urge my colleagues to ask themselves what message are they really trying to send here today? Is it just to the transportation sector? If they truly want a national energy policy, do they want to write it piecemeal? Do they want to ignore the procedures in current law that prescribe how a national energy policy plan ought to be assembled?

AMENDMENT NO. 2714

(Purpose: To provide financial assistance to terminated automobile workers)

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. MCCLURE and Mr. KENNEDY, proposes an amendment numbered 2714.

Mr. SIMON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, between lines 16 and 17, insert the following:

TERMINATED WORKERS

SEC. 15. (a) This section may be cited as the "Relief for Terminated Workers Act".

(b) Subject to the availability of appropriations, not later than 120 days after the date of the enactment of this Act, the Secretary of Labor shall, by regulation, establish for eligible terminated employees—

(1) a program of readjustment allowances substantially similar to the trade readjustment allowance program under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.) and

(2) a program for job training and related services substantially similar to the program under part II of subchapter B of chapter 2 of title II of such Act (19 U.S.C. § 2295 and 2296), and

(3) a program for job search and relocation allowances substantially similar to the program under part III of subchapter B of chapter 2 of title II of such Act (19 U.S.C. § 2297 and 2298).

(c) The Secretary is authorized to enter into agreements with any State to assist in carrying out the programs under subsection (b) in the same manner as under subchapter C of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.).

(d) For purposes of this section, the term "eligible terminated employees" means any individual who is a member of a group of workers engaged in the production of motor vehicles in the United States or related industries that the Secretary of Labor certifies, under the procedures described in subchapter A of chapter 2 of title II of the Trade Act of 1974, as eligible to apply for assistance under this section because the Secretary determines that—

(1) a significant number or proportion of the workers in such workes' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) compliance with the provisions of the Motor Vehicle Fuel Efficiency Act of 1990 were the primary cause of such total or partial separation, or threat thereof, and to such decline in sales or production.

(e) There is authorized to be appropriated for fiscal year 1991, and each of the next following 4 fiscal years, such sums as may be necessary, but not in excess of $50,000,000 for any such fiscal year, to carry out the provisions of this section. Such sums shall remain available until expended.

(f) An application for benefits under this section shall be filed after on or before the date that is 4 years after the date of enactment of this Act.

On page 34, line 18, strike out "15" and insert in lieu thereof "16".

Mr. SIMON. Mr. President, I offer this amendment on behalf of Senator MCCLURE, Senator KENNEDY and myself. It is an amendment that would protect workers if this bill does become law.

First, by way of general background, this bill ought to be part of an overall energy package. We need an energy policy in this country. We have none. We are the world's biggest economic power, and we have absolutely no energy policy. It is just irrational. We are spending, according to the latest Pentagon estimates I know, $15 billion in the Middle East right now. What if 10 years ago we had said, let us take 10 percent of that amount, $1.5 billion, and put it toward research of electrical cars? I think we would be in infinitely better shape securitywise, environmentally and in every other way.

That is a digression from this particular bill.

This amendment says let us take the Trade Adjustment Act and apply it to the effect of this bill so that an employee of General Motors, Ford, Chrysler, who draws the full unemployment compensation for 26 weeks, would have another 26 weeks, if the Secretary of Labor so drafts this, of unemployment compensation or training available. This bill has been endorsed by the AFL–CIO, by the auto manufacturers, and I know of no objection from the environmental community.

Under the Trade Adjustment Act, only one-fourth of the employees who are so affected ultimately take advantage of the Trade Adjustment Act; one-fourth of those who draw some unemployment compensation. My guess is we would have the same thing here.

This is somewhat similar to the amendment offered by Senator BYRD on the Clean Air Act for coal miners, except it is appreciably smaller in terms of benefits. The Byrd proposal, which I supported, offered in excess of $500 million. This has a cap over a 5-year period of $250 million.

In the debate in the House on the Byrd-type of proposal, Congressman BOB WISE of West Virginia used this example. He said, "When you build a house and the highway department says we want this house for a public purpose, they have to move you and compensate you and help you make the transition. It just seems to me, if you are going to run a highway through a house and you ought to give people a transition, that when you run a law through their livelihood, you have to help them make the same transition."

That is basically what this amendment calls for.

As I indicated, it is appreciably less than the Byrd amendment called for. It called for, for example, 52 weeks of additional compensation. This calls for 26 weeks and it gives the Secretary of Labor some flexibility. It simply says, as drafted, it should be substantially similar, the precise words of the amendment, to the Trade Adjustment Act.

If my colleagues—and I am one of the supporters of this legislation; I do not do this as one who opposes the legislation—but if my colleagues from Nevada and Washington are correct that there really will be no fallout in terms of loss of jobs, then there will be literally no cost to this particular piece of legislation.

In my own State of Illinois, we have 4,000 workers at the Belvidere plant of Chrysler that makes the New Yorker. We have 2,900 people who work at a Ford plant making a midsize car there. I want to protect those workers, as they are not protected under the present legislation. My amendment would do that.

Finally, Mr. President, let me just add a very practical word. The reality is, I think this bill is going to pass the Senate. I think it will not likely pass the House, and if it were to pass the House, the President has indicated he is going to veto it. So we are not going to get a bill this year. But, we can shape the dimensions of the bill that I am sure is going to come up after the first of the year. This is a signal to whomever is involved in any negotiations: Let us protect the workers in these automobiles plants in the process. That is what my amendment does.

I will be pleased if the two managers were to accept the amendment. I have not received any final word from either one of them. If they do not accept the amendment, then I will ask for a rollcall vote, Mr. President.

Mr. RIEGLE. Will the Senator yield?

Mr. SIMON. I will be pleased to yield to my colleague.

Mr. RIEGLE. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment.

Mr. SIMON. I will be pleased to add Senator RIEGLE as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, the distinguished Senator from Illinois in prefacing the discussion of his amendment listed a number of groups who were enthusiastically in its support including again the automobile manufacturers. In fact, my inclination is that the entire list of the proponents of the amendment were among those who most vehemently opposed the bill, and therefore one happens to question to a certain extent their motives in backing the amendment.

The distinguished Senator from Illinois, on the other hand, says that he favors this bill and the theory behind it, the necessity for increasing the efficiency of our automobiles, the high desirability of reducing our dependendce of foreign sources of oil and the desirability of cleaning up our air and the like, and yet when he predicts that this bill will pass the Senate but in all probability not get any further during the course of this session of Congress, he does so I think without reflecting on the impact of this amendment should it be a part of the bill.

My inclination is that the adoption of this amendment will doom this bill even in the Senate. The distinguished Senator from Illinois and the Presiding Officer know how controversial the Byrd amendment was at the time of the debate over a Clean Air Act which everyone in this body knew was going to pass this body and which almost every Senator was quite certain would eventually become law.

But that kind of force is not to be found behind this bill. This CAFE standards proposal is itself highly controversial. I wish I shared the unrestrained enthusiasm of the Senator from Illinois for its prospects of surviving a vote on cloture tomorrow and then passing the Senate. I think passage is very possible but not certain. But I am convinced that the passage of this amendment will doom any opportunity to get 60 votes tomorrow for cloture on the bill.

Let us go on to the amendment itself. Its rationale is stated to be similar to that of the Byrd amendment during the debate on clean air. It seems to me to the contrary, Mr. President, that there is a profound distinction between the two. There was clearly no argument on the floor of the Senate during the long debate on the Byrd amendment and on the Clean Air Act as to whether or not the passage of the Clean Air Act being considered by the Senate would result in unemployment in soft coal mines in West Virginia and adjacent States. It was implicit in that bill that the people of the United States would use far less high sulfur soft coal and would move substantially to other fuels. That adverse economic impact was clearly present, present beyond debate. I do not believe a single Member of the Senate ever stood up and said, oh, no, there will not be any effect on the production of coal in West Virginia.

The Byrd amendment was controversial. It was controversial partly because of its cost, but most particularly for the blunt proposition that to a person who is unemployed by reason of technological change or by reason of any other changes in our economy is unemployed. That individual suffers just as much in one State as he or she does in another, suffers just as much by reason of one cause for that employment as for any other. The debate was on whether or not it is either fair or rational to take one group of people put out of jobs and treat them differently and more favorably than any other.

Certainly it is appropriate to argue at the right time and place that we should have more generous unemployment compensation and greater eligibility for retraining in the opportunity for new jobs. Certainly we are not lacking in the Committee on Labor and Human Resources services sympathetic with those views, but when we do deal with that issue we ought to deal with that issue with respect to everyone who finds himself or herself in this particular position and not just specially selected, relatively small groups of individuals in one State or in one industry or in one kind of business or another as this amendment does and for that matter the Byrd amendment did.

The profound difference between this and the Byrd amendment, however, is where in the Byrd amendment we were dealing with real people, real unemployment, and real needs, we clearly do not know that in this case as has been acknowledged by the distinguished sponsor of the amendment.

What possible relationship can there be between the construction of more efficient cars for consumers in the United States and increased unemployment? It seems to me, Mr. President, that the probable impact of this bill will be exactly the opposite. These automobiles will not be less desirable to consumers. They will be more desirable. Both the Senator from Nevada and I have already shared with Members of the Senate the high degree of acceptability in public opinion surveys of increased energy efficiency.

Mr. SIMON. Will my colleague yield?

Mr. GORTON. I will be happy to yield.

Mr. SIMON. The amendment says that the Secretary of Labor has to determine that this legislation is the primary cause of the loss of jobs. And if my distinguished colleague, for whom I have great respect, from Washington, is correct in his assumption that there will be no loss of jobs, then in fact this amendment will not cost one penny. Is that not correct?

Mr. GORTON. The Senator from Illinois is, of course correct, but we could set up an infinite number of amendments based on iffy propositions which are almost certainly not to come true and justify them in exactly the same fashion.

It seems to me the minimum threshold for any amendment on a subject of this sort or for that matter any conditional amendment of any nature at all should be that there is a reasonable

responsibility at least, perhaps a probability, that the condition which the amendment is sought to address is going to take place. In this case, I do not see the remotest connection between the focus of the bill itself and increased unemployment.

It was certainly argued at the time of the CAFE bill in the seventies that because foreign manufacturers were already more energy efficient and could meet the goals of that bill more readily than could domestic manufacturers we would suffer a loss in domestic employment. It is for exactly that reason that the distinguished Senator from Nevada and I in this bill require each manufacturer to meet the same percentage challenge, the same percentage goals. In fact, one of the objections that some Member who strongly defend the foreign and particularly the Japanese auto manufacturers have is that this is unfair to imports. In fact, it is the thrust of their argument that this bill will probably increase employment in domestic manufacturers because it will have a heavier burden to the laid on manufacturers of automobiles overseas and imported into the United States.

But it is not a justification for adopting this amendment that if its premise does not take place it will have no impact. Under those circumstances it is, of course, completely worthless. One must submit, it seems to me, the proposition that this result, that is increased unemployment, is a likely result of the passage of this bill.

And I say to the Senator from Illinois, there is nothing to indicate that that is the case. Will people use automobiles less when their engine efficiency is greater? That seems to me to be highly unlikely. Will people refuse to buy automobiles because they are more efficient? Will we drive more of our purchasers to purchase imported automobiles when their standards are even higher than Americans are? We do not have that.

Would the Senator from Illinois be proposing this as an amendment to a bill to encourage rapid transit in this country? Are we now to attach proposals like this to anything which increases transportation efficiency in the United States? If we are to give, let us say, an appropriation of $1 billion or $2 billion to the city of Los Angeles to build a subway, to take automobiles off the road, will the Senator from Illinois aks for trade adjustment assistance because that might have some remote impact at some point or another on employment in the automobile industry? I do not think so. I think the Senator from Illinois has not in the past.

I must say that it seems to me that the Senator from Illinois is putting up an amendment which whether it is designed by him to do so or not is going to have the inevitable effect of seeing to it that no bill passes and therefore no additional trade adjustment assistance when his proposal is not connected with any probable or likely impact of the passage of the bill.

If anything, it would seem to me, the complaint by the automobile companies would be that this will cause them to make very substantial capital investments which will increase rather than decrease employment.

Mr. SIMON. Mr. President, if I could respond just briefly to my colleague from Washington, I hope he is correct in his conclusions. I think there is a real possibility that he is correct. But I also think there is a real possibility that as we make this progress there are going to be people out of work. This strikes me as not just a remote possibility. I think it is a real possibility. Despite that real possibility I am going to be voting with the Senator from Washington and with the Senator from Nevada on cloture. I am going to be voting for the passage of this bill. But I think we have to recognize that workers in this country may be affected. It is not just some far off, remote possibility. I think it may happen. I think we ought to have the protection for them.

So my hope is that we will accept this amendment.

Mr. RIEGLE. Will the Senator yield at that point?

Mr. SIMON. My colleague from Washington has the floor.

Mr. RIEGLE. I think he yielded the floor.

Mr. SIMON. I yield the floor.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Michigan.

Mr. RIEGLE. I thank the Chair.

I just say to the Senator from Illinois, no money is spent unless workers lose their jobs.

Mr. SIMON. That is absolutely correct.

Mr. RIEGLE. If I may just continue, that is what troubles the sponsors of the amendment because they do not want to have the knowledge in a direct way that there are going to be jobs that are taken away, eliminated as a result of this amendment because, if there were not, then the amendment does not mean anything. If we do not lose any jobs, no money is required.

Your amendment only has an effect if jobs are lost. They ought to be for this amendment. The reason they are not for the amendment is that they know jobs are going to be lost, and they are going to be lost for one reason, because the Government, if this bill were to pass, is mandating the requirement, the net effect of which will be to lose a certain number of jobs in this country. So the decision to eliminate those jobs will come right out of here.

The Senator's amendment says if that happens, let us have something in place that recognizes that impact and let us at least have the responsibility to recognize that we caused that to happen. They want it both ways. They want to get rid of the jobs. They do not want to have the acknowledge they are getting rid of the jobs, and they sure do not want to have the Government accept any responsibility for the fact that we will have caused it.

I will just say one other thing to the Senator; that is, the extra capital costs out through 1995 are estimated to be, the extra capital costs for the automobile industry to get this job done, over $60 billion. Those are the estimates as to the additional capital that will have to be required to meet the mandates in this bill.

There is no idea where it is going to come from. We are not providing it here in the bill. We are not providing 5 cents in the bill to actually cover the capital costs of getting it done. The economic impact is going to be tremendous and on the automobiles. I will talk about that later.

But am I correct in my understanding that the only way the amendment kicks in is if we can identify jobs that are lost because of what they are proposing to do?

Mr. SIMON. The Senator from Michigan is correct. We leave this up to the Secretary of Labor to determine.

I find myself, Mr. President, caught somewhere between the Senator from Michigan, who is sure we are going to lose jobs, and my colleagues from Nevada and Washington, who are sure we are not going to lose jobs. I do not know. But I think we ought to protect workers in the event that it happens.

Mr. RIEGLE. If the Senator will just yield to me again or respond, the point is, if they did not feel jobs were going to be lost, they should be for the amendment because the amendment does not have any effect if no jobs are lost. The only reason they are against the amendment is because they know jobs will be lost because, if no jobs are lost, then the amendment never has any effect. So that want it both ways. They want to pretend there is no job loss and the Senator is saying if it turns out that there is, let us have the Government come in because we will have caused it and let us respond in an affirmative way. They say no, they are not prepared to do that. They want it both ways. They want to eliminate the jobs but they do not want to accept the responsibility for doing it.

I thank the Senator.

Mr. SIMON. Mr. President, just to add a word or two here, I have voted for, I believe, every amendment that has come up during my years in the House and the Senate to increase requirements for standards. I have voted for airbags. Why the industry did not years ago accept airbags to make high-

way driving safer, I do not know. For one of the major manufacturers, General Motors, to say "We are going to have them in all cars in 1995," we ought to have them in all cars by 1992. I want to press for more requirements. But I also think we have to protect workers.

I hope my colleague from Nevada and my colleague from Washington are correct in saying there are going to be no loss of jobs.

I hope my colleague from Michigan is incorrect. I do not know. I do not think anyone knows for sure.

In the event of this uncertainty, it seems to me we ought to have some protection.

So, Mr. President, since there appears to be opposition—unless my colleague from Nevada is willing to accept this amendment—I ask for a rollcall vote.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. BRYAN. Mr. President, I desire to be recognized for the purpose of speaking further on the amendment.

Mr. RIEGLE. Mr. President, a parliamentary inquiry. In a situation such as that, because we are going to be here a long time, if we are not going to get an understanding, if we are going to vote on amendments that are asked for, normally we do that around here, how many affirmative indications are required in this situation, if I can inquire of the Chair?

The PRESIDING OFFICER. One-fifth of the presumed quorum could be 11.

Mr. RIEGLE. It would seem to me we have an option here that we can—I have seen votes ordered with less than 11 on the floor. Is that an iron requirement?

The PRESIDING OFFICER. The Chair would put the question for a second time. Is there a sufficient second? There is not a sufficient second.

Mr. SIMON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. My understanding, am I correct, is that it requires one-fifth of those present to require a rollcall? Is that incorrect?

The PRESIDING OFFICER. The constitutional requirement is one-fifth of the presumed quorum, which would require 11.

Mr. SIMON. Well, Mr. President, if we do not have that one-fifth, I think we will have very extended discussion on this. We are going to get the rollcall. I would be pleased to yield to my colleague from Nevada, if he wishes to say something. But we will get a rollcall on this amendment.

Mr. RIEGLE. If we want to have all the Members come over to establish a quorum, we can do that. It is an inconvenience to a lot of people. It is unnecessary. I think we can accomplish the same end by getting indication that we have support for a rollcall on this. Might I inquire of the Chair, a parliamentary inquiry?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. There are four Senators on the floor at the moment. If all four of us were to so indicate that we supported the request for the yeas and nays, would that be sufficient?

The PRESIDING OFFICER. The Chair is advised that the appropriate response to that inquiry is that the Chair is bound by the rules of the Chamber.

Mr. RIEGLE. I understand that. A further parliamentary inquiry. I have been on the floor any number of times when I have seen a vote ordered with far less than 11 persons on the floor. Have we been in error in those situations, or is it a flexible rule that can be applied in different ways at different times?

This is a serious question, and we are just not going to proceed unless we get a clear understanding. I have seen it done dozens of times. Every Senator in the Chamber has. I am not saying something that everybody is not aware of.

The PRESIDING OFFICER. If the Senator would give the Chair a chance to consult with the Parliamentarian, we will attempt to give him an answer.

Mr. SIMON. Mr. President, maybe I have a way out of this dilemma. I ask unanimous consent that we have a rollcall on this amendment.

The PRESIDING OFFICER. The Chair is advised that I cannot rule that in order, a request for unanimous consent on a call for a sufficient second.

The yeas and nays cannot be ordered by unanimous consent.

Mr. SIMON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I ask again for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Are the managers of the bill aware that a request for a sufficient second is before the body?

Mr. GORTON. They are.

Mr. BRYAN. We are.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. SIMON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, let me address those with an interest in this subject. We are not in a position right now to settle this unless we want to order a quorum call and interrupt the budget summit and some other things.

I am wondering if we can leave the situation precisely as it stands with respect to the Senator from Illinois. I intend by one means or another to get a vote on his amendment. I do not think we can properly deny him one.

Senator NICKLES has an amendment he wishes to offer. The amendment of the Senator from Illinois has been offered and debated.

I am wondering if we can set aside for now the request for the yeas and nays and offer that again so that we might proceed to the Senator from Oklahoma being able to offer his amendment.

Mr. SIMON. Mr. President, if my colleague will yield, I agree to having my amendment still be the pending amendment, and then we ask unanimous consent, as the Nickles amendment or any other amendment comes up, to set that aside. But frankly, I intend to get a vote also on my amendment.

I have not been here as long as my colleague from Michigan has. I cannot remember when we ever had a situation where we tried to deny anyone a vote on an amendment.

Mr. RIEGLE. I cannot either, I say to my colleague from Illinois. I do not recall not raising my hand on any amendment, no matter how objectionable I might have found it to be.

I think this is quite unusual. I am wondering.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan retains the floor.

Mr. RIEGLE. Can I yield the floor and yield to the Senator from Oklahoma?

The PRESIDING OFFICER. The Senator can yield to the Senator from Oklahoma for a question. He cannot yield the floor to another Senator directly.

Mr. RIEGLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask unanimous consent that the Simon amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, let me comment on Senator SIMON's comment. I am disappointed he did not get a second for a vote on his amendment.

I will assure him that many of us will work on this side of the aisle to make sure he does.

I think the Senator is entitled to a rollcall vote on the amendment. It is a substantive amendment. I am not sure I agree with it. I am not sure what it does to the bill. It may do as some have said; it may kill the bill.

Frankly, this bill is not going anywhere, anyway. It may or may not pass the Senate. I do not think it will. It may pass the Senate, but it is not going to pass the House of Representatives and become law this session.

Certainly, the Senator is entitled to a vote on his amendment. We have a tradition around here, even if we disagree with the amendment, to give the Senator a rollcall vote if he insists on it. If he wants to have a rollcall vote, I think he is entitled to have a rollcall vote. I am confident we can find 11 Senators, if not before 7 o'clock, then by 7 o'clock; and when we begin voting on other amendments, he will then be able to have the necessary second to have a rollcall vote on his amendment.

Mr. President, I have an amendment. I am going to send it to the desk.

AMENDMENT NO. 2715

(Purpose: To require Government purchased vehicles to individually meet or exceed CAFE levels)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 2715.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, between lines 16 and 17, insert the following:

GOVERNMENT PURCHASED VEHICLES

SEC. 15. Section 510 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2010) is amended to read as follows:

"GOVERNMENT PURCHASED VEHICLES

"SEC. 510. (a) All passenger automobiles acquired, on and after the expiration of the 120 days following the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1990, by any agency, department, or other instrumentality of the executive, legislative, or judicial branch of the United States Government in each fiscal year shall exceed the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, shall exceed the weighted national average fuel efficiency of new vehicles, determined by the Secretary in accordance with this Act, sold in the United States during the preceding model year. Commencing with model year 1995 and each model year thereafter, all light trucks purchased by any such department, agency, or instrumentality shall exceed the fuel economy standard applicable for such model year under section 515.

(b) Effective March 31, 1991, no member of Congress or official of the legislative branch of the United States Government may utilize a passenger automobile acquired by any agency, department, or other instrumentality of the legislative branch of the United States Government unless such passenger automobile meet or exceeds the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, meets or exceeds the weighted national average fuel efficienty of new vehicles, determined by the Secretary in accordance with this Act, sold in the United States during the preceding model year.

"(c) As used in this section, the term 'acquired' means leased for a period of 60 continuous days or more, or purchased.

"(d) The provisions of this section shall not apply to any vehicle—

"(1) used by or for the protection of the President and Vice President of the United States;

"(2) used for law enforcement or other emergencies;

"(3) classified as a military vehicle;

"(4) which uses compressed natural gas;

"(5) which uses 85 percent or more methanol;

"(6) which uses 85 percent or more ethanol; or

"(7) which uses 100 percent propane or electricity.".

Mr. NICKLES. Mr. President, this amendment is really fairly simple and one I expect the managers will agree to. I am not sure if they have seen a copy of it. If not, we will get both managers a copy.

This bill basically requires all Federal agencies in the executive, legislative, and judicial branches to buy cars and light trucks that exceed the CAFE standard. It is about that simple. In other words, the CAFE standard says the automobile companies have to manufacture cars that exceed a certain standard, and, under the Bryan bill, it will increase the present standard by 20 percent by the year 1995 or 1996 and 40 percent by the year 2000.

This bill says that GSA, when it is purchasing vehicles for the Federal Government, has to purchase vehicles that meet or exceed CAFE standards so the Government agencies will have fuel-efficient automobiles. If it is good enough for us to mandate it on the entire public, certainly Government should set the standard and purchase vehicles that meet or exceed the standard.

I also have an amendment which would require that, by March 31 of next year, all the vehicles that are owned or operated by the legislative branch will meet or exceed the current CAFE standard. Again, this is the idea that if we are going to mandate this on the rest of the consuming public, then the vehicles we purchase and the vehicles that the legislative branch has would meet or exceed the standard.

I have seen the Sergeant at Arms and others drive big cars that do not meet the standard. Frankly, they miss the standard by a lot. I do not know exactly what their fuel economy standard is, but it is my guess it certainly is less than 20, and the current standards is 27.5. So if we are going to mandate fuel economy standards on basically the entire American public, we should make sure that the Federal Government leads the way, leads by example. So I hope that my colleagues will agree to this amendment.

I have been informed that the GSA currently purchases something like 55,000 automobiles per year. So we are talking about a fairly significant purchase.

I might mention for the information of those who have been working on this bill—does the Senator have a copy of the amendment yet?

Mr. BRYAN. No.

Mr. NICKLES. They are being produced. I will give it to the Senator.

We put in exemptions for the President and the Vice President. We put in an exemption for law enforcement and emergency type vehicles such as ambulances. We have an exemption for vehicles classified as military vehicles; also exemptions for vehicles which use compressed natural gas, or uses 85 percent or more methanol, or uses 85 percent or more ethanol, or vehicles which use 100 percent propane or electricity. We want to encourage the use of those vehicles. We certainly did in the clean air bill. I think this amendment would complement that as well.

So, environmentally, I think this amendment is a good amendment and certainly, as far as fuel economy, if we are going to mandate it on the rest of the consuming public, we should mandate it on the Federal Government as well.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KERREY). Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I ask unanimous consent that it now be in order that the yeas and nays be requested on the amendment offered by Senator SIMON earlier this afternoon. I do so without in any way trying to preclude any debate or time for him to return to the floor but simply to clear a procedural obstacle.

Mr. RIEGLE. Reserving the right to object, I wish to make an inquiry. I appreciate the effects of the Senator from Nevada to try to resolve this, but may I ask, if the yeas and nays are ordered does that indicate an understanding that we will actually then have a vote on the amendment by Senator SIMON?

Mr. GORTON. If I may answer that, it certainly is not going to preclude a motion to table.

Mr. RIEGLE. I understand. But is it clear that the understanding is that, with the yeas and nays being ordered, it will be disposed of one way or another by a recorded vote? Is that the understanding?

Mr. BRYAN. That is certainly the intention of the Senator from Nevada making this unanimous-consent request.

Mr. RIEGLE. I ask that the unanimous-consent request be amended by making it clear that the yeas and nays are ordered and that by either a tabling motion or an up-or-down vote, there will in fact be a recorded vote on the Simon amendment.

If I can inquire of the chair, the unanimous consent request, then, would be that the yeas and nays be oredered on the Simon amendment and that after the Betts votes tonight, that the Simon amendment will be voted on, either up or down, or if a tabling motion is offered then the tabling motion—but the request will be that there will be a certain vote on one basis or the other on the Simon amendment?

Mr. BRYAN. Mr. President, I do not have any objection to that.

The PRESIDING OFFICER. Does the Senator from Nevada then include that in the unanimous-consent request?

Mr. BRYAN. The Senator from Nevada would so request.

The PRESIDING OFFICER. Is there objection.

Mr. RIEGLE. Mr. President, let me let you make the ruling and then I would like to inquire.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. RIEGLE. Am I correct in understanding then that the yeas and nays have been ordered?

The PRESIDING OFFICER. No.

Mr. RIEGLE. Mr. President, I ask for the yeas and nays on the Simon amendment.

The PRESIDING OFFICER. Is there a sufficient second? Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. RIEGLE. Mr. President, I wonder, could I have the attention of the Senator from Oklahoma for just a moment? The yeas and nays having been ordered on his amendment, I wonder if we can have the same condition of the unanimous-consent request that, in fact, there be a recorded vote on the Senator's amendment, either up or down or, if a motion is made to table, then a tabling motion. We have to have it clearly understood in the unanimous-consent agreement that there will not only be a vote but that a vote will take place.

Mr. GORTON. Mr. President, I think that that is premature at this point. We are working out as to whether or not there are going to be second-degree amendments. We may, under these circumstances, have something which is voted on by a voice vote. We certainly are not going to stand in the way of anything, but we are not going to agree to that unanimous-consent agreement just yet. Let us work it out and see if we have an agreement we are going to agree to first.

Mr. RIEGLE. To make it clear, I take it the yeas and nays have been ordered and the issue is still up in the air as to whether there will be with certainty a vote on the amendment of the Senator from Oklahoma or a tabling motion, and that issue is left unsettled at this point; is that correct?

Mr. GORTON. That is correct, Mr. President.

Mr. BRYAN addressed the Chair.

Mr. RIEGLE. Will the Senator yield, just for parliamentary inquiry? I am advised this is a requirement that we ask unanimous consent that no amendments be in order to the Simon amendment, simply that the matter be locked in place as we have agreed. I make that unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I am going to shortly send to the desk an amendment and ask for its consideration. I want to describe it before I send it down.

This issue which has been raised and joined has to do with the question of how the United States does a better job of dealing with its energy policy needs and its conservation needs, and certainly that has been brought into very sharp focus by the events in the Middle East with which we are all familiar.

It is clear that the country needs a comprehensive national energy strategy. The Secretary of Energy has now been working for better part of this year with a series of meetings around the country to gather information, expert testimony, and so forth, to put us in a position as a nation to develop a new comprehensive national energy strategy. The presumption is that sometime early next year we will get started on that as a nation because of the urgency of our doing so.

So I want to read the amendment that I am going to send to the desk, which is in the form of a joint resolution. It sets forth specifically the need for a national energy policy plan of which CAFE, being one of many components, would, of course, eventually be a part. It reads as follows:

Whereas, recent events in the Mideast precipitated by the Iraq invasion of Kuwait are a poignant and threatening reminder that the security of our economy and that of the modern industrial world is dependent on a fragile supply of energy, especially Mideastern oil,

Whereas, over a decade has passed since the United States enacted comprehensive legislation addressing our energy security,

Whereas, the United States does not have an up-to-date national energy policy,

Whereas, the United States needs a comprehensive, not a piecemeal, national energy policy plan meeting the following criteria:

(a) the policy would cover:

(1) all sectors of the economy,

(2) both the short-term and the long-term,

(3) both the demand for, and supply of, energy;

(b) the policy would be formulated by the President and the Congress;

(c) the policy would be based on current data and analysis and on a quantitative projection of our future energy needs and supply,

(d) the policy would include recommendations for development of new technologies to forestall energy shortages and to encourage conservation,

(e) the policy would identify the resources needed to carry out the objectives of the plan,

(f) the policy would recommend legislative and administrative actions necessary to achieve the objectives of the plan.

Whereas, current law contained in Title VIII—"Energy Planning" of the Department of Energy Organization Act of 1977 already mandates a specific procedure for creation of a National Energy Policy Plan that contains such criteria,

Whereas, the President has called for creation of a National Energy Strategy that the Department of Energy has nearly completed;

Therefore, it is the sense of the Senate that in accordance with such law, the President should submit, within six months of enactment, and the Congress should review and revise as necessary, a National Energy Policy Plan, including appropriate legislation to implement such plan."

That is the full text of the-sense-of the-Senate resolution that I will be sending to the desk. It addresses itself to a number of the points made by both the proponents of the bill that is before the Senate and those of us who are opponents of this particular bill.

I think there is general agreement among all of us that we need to have a new national energy policy and plan developed and put in place that can save energy, that can look for alternative sources of energy, and that can generally improve our overall situation with respect to energy savings and energy efficiency. That, of course, touches almost every area of our national life. It touches all forms of energy use, automobiles and cars being one of those, but there are a vast number of other uses as well that have to be considered in context of a national energy policy plan.

Mr. GORTON. Mr. President, will the Senator from Michigan yield for a question?

Mr. RIEGLE. I will definitely yield, but if I could just add a couple of the other thoughts.

I want to make sure that the sense-of-the-Senate resolution is put in the proper amendment form before I send it to the desk.

I have a rather long statement that goes on for about 21 pages, double spaced, which lays out in some detail the history of our episodic efforts as a nation to deal with the energy problem as we have sort of had an on-again off-again strategy over the past couple decades. This statement goes through and draws from it certain conclusions that become the foundation for the argument I am presenting now with respect to this particular sense-of-the-Senate resolution I will be offering.

Yes, I yield to the Senator.

Mr. GORTON. I have two questions. The first is, is this amendment an addition to or a substitute for the bill which is being debated at the present time?

Mr. RIEGLE. No. This would be in addition to. This would not be a substitute. In other words, this would be an add-on as opposed to something that would replace the bill.

Mr. GORTON. The second question I have is, if this Senator is not incorrect, the Department of Energy has been working on a proposal, which will be the President's proposal, for a national energy policy by the end of this year or by the beginning of next year. Is the understanding of this Senator correct and, if it is correct, is not the proposal of the Senator from Michigan going to take a longer period of time and somewhat duplicative?

Mr. RIEGLE. No. In fact, I think it dovetails with that. It puts the Senate and, hopefully, the whole Congress, if the legislation passes, on record as saying that we would take the results of the study which the Energy Secretary is completing, and we would, in turn, convert that into a full-blown national strategy with whatever administrative and legislative actions would be required to implement it.

So I would envision that after his recommendations are made, there will be a period of discussion. There will be a give and take in terms of public debate. But this would be a statement of purpose which would lock the country in, saying take those recommendations, have the debate, put it into tangible form, and within 6 months be prepared to actually set up whatever implementing machinery is required to clear the track and to get the administrative agencies and the legislative branch in position to actually go ahead and do whatever steps are required to apply that new strategy.

In a sense, it goes beyond the notion of coming up with some policy ideas and putting them out there. This would be, in effect, a legislative commitment that we would be making to assign it that kind of priority, to do it in a comprehensive way, and to take it up within that time frame.

Does that answer the question of the Senator?

Mr. GORTON. Yes.

Mr. RIEGLE. On this amendment, at an appropriate point, after I have sent it to the desk, just so everybody is aware, I will ask for the yeas and nays. I hope that will be agreeable. But in any case, I am going to be sending it to the desk in due course. Until that time, I would yield the floor.

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. We have the amendment in a form now that conforms to the parliamentary situation which we are now in. As I understand, I also need to make a unanimous-consent request that the other two amendments ahead of me in line, namely, the Simon amendment and the Nickles amendment, be temporarily set aside so that this amendment can be now offered to the Senate. So I make the request that those other two amendments be temporarily set aside for the purpose of offering this amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 2722

Mr. RIEGLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] proposes an amendment numbered 2722.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following new section:

"SEC. . NEED FOR A NATIONAL ENERGY POLICY PLAN.

The Senate finds that:

Recent vents in the Mideast precipitaed by the Iraqi invasion of Kuwait are a poignant and threatening reminder that the security of our economy and that of the modern industrial world is dependent on a fragile supply of energy, especially Mideastern oil,

Over a decade has passed since the United States enacted comprehensive legislation addressing our engery security,

The United States does not have an up-to-date national energy policy,

The United States needs a comprehensive, not a piecemeal, national engergy policy plan meeting the following criteria:

(a) the policy would cover:

(1) all sectors of the economy,

(2) both the short-term and the long-term,

(3) both the demand for, and supply of, energy;

(b) the policy would be formulated by the President and the Congress;

(c) the policy would be based on current data and analysis and on a quantitative projection of or future energy needs and supply,

(d) the policy would include recommendations for development of new technologies to forestall energy shortages and to encourage conservation,

(e) the policy would identify the resources needed to carry out the objectives of the plan,

(f) the policy would recommend legislative and administrative actions necessary to achieve the objectives of the plan.

Current law contained in Title VIII—"Energy Planning" of the Department of Energy Organization Act of 1977 already mandates a specific procedure for creation of a National Energy Policy Plan that contains such criteria,

The President has called for creation of a National Energy Strategy that the Department of Energy has nearly completed;

Therefore, it is the sense of the Senate that in accordance with such law, the President should submit, within six months of enactment, and the Congress should review and revise as necessary, a National Energy Policy Plan, including appropriate legislation to implement such plan."

Mr. RIEGLE. Mr. President, with that amendment now before the

Senate, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. RIEGLE. I thank my colleagues. I thank the Chair. I have no further debate to engage in on that amendment at this particular time, so my inclination would be to yield the floor, and so do.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr President, if we may have an opportunity to look over the amendment which has just been proffered by the Senator from Michigan, we want to review that and perhaps there is something we might be able to agree with.

I do not disagree for the need for a national energy policy. If we can get such a copy, we could take a look at it to see if we might be able to reach an agreement. In the interim, I will suggest the absence of a quorum.

Mr. RIEGLE. Will the Senator yield before he makes that request? The amendment is being copied on the copy machine and there should be a copy available in a moment. I would be very happy to have the Senator take a look at it.

Mr. BRYAN. I renew my suggestion of the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I am here to speak in support of the Bryan amendment, the pending business before the Senate. I am aware that we are going to have amendments to it. I am aware that tomorrow we will have a cloture vote on it. I want to take this occasion to speak to the merits of the amendment, without respect to any of the amendments, be they perfecting or other, to the Bryan amendment.

I want to say at the outset, contrary to the assertions made by some, the decision that each of us is going to have to make on this amendment, whether it is to impose a higher corporate average fuel economy standard on automobiles or not, is by no means a simple or an easy call. The policy question before us promises rewards, but I would be the first to say that there are some legitimate risks that are entailed as well.

The most direct reward, and it is unrebutted, I believe, is that full compliance with the standards proposed in this bill will lessen America's dependence in foreign oil and improve our balance of payments, as well as lower total emissions from automobiles which degrade the environment or, in some cases, threaten human health. Nevertheless, the opponents of this amendment have pointed out that the higher CAFE standards could undermine the competitive position of American-made automobiles and undercut highway safety.

I am not here to dismiss any of those arguments. On competitiveness, automobile manufacturing remains a key sector of our economy. Erosion of the automotive sector has repercussions far beyond Detroit, and we feel it in my hometown, in the steel valleys, in the coal fields, and in the hundreds of small plants supplying parts for the carmakers in my home State. It is an argument that you do not dismiss out of hand.

It is true, it seems, that the CAFE standard contemplated by this legislation will require much greater and sustained levels of investment by both foreign and domestic automobile manufacturers. In some countries, they will be able to borrow or raise capital at cheaper rates or costs than our domestic producers. Such are the facts of life in a more global economy, and they do indeed need to be recognized for what they are; they are the facts.

And, of course, some of us are all too familiar with these realities, because in Pennsylvania, we have seen jobs, good jobs, lost to unfair foreign competition. Our manufacturing base has been decimated by the predatory practices of other nations. So when the Senators from Michigan debate the merits of this proposal as an issue of competitiveness in jobs, it is an argument that I listen to and I certainly understand.

However, Mr. President, as somebody who is indeed sensitive to that issue, it seems, at least to this Senator, that the competitiveness arguments advanced against this legislation stem from endemic problems we ought to be addressing not through this legislation. The endemic problems are the Federal budget deficit, which keeps the cost of capital artificially expensive; an extremely passive trade policy, a soup-line trade policy which lets others establish a one-way street into this country while putting up stop signs into theirs; and a Tax Code that penalizes progrowth, proinvestment strategies.

In the next few weeks, the Senate will have an opportunity, if the budget negotiators are successful, to attack the most critical of these endemic policy flaws. We will have an opportunity to enact measures designed to facilitate and reduce the cost of the investments in automotive design and production that the CAFE standards will require.

As to the second concern, safety, highway safety specifically, if you look at the statistics, smaller cars do appear to have become less safe than bigger cars, and in fact may have done so because automobile makers have down-sized the weight and the size of their vehicles as the primary means of improving fuel economy. The major companies can produce 40-mile-per-gallon cars, but today they are 18 percent smaller than the average car purchased. Smaller cars can expose their occupants to more injuries as currently constructed, because they have less crush space to absorb the impact of the crash.

Since we all put a very high value on human life and limb, these two are concerns that should not be dismissed out of hand, Mr. President.

But it needs to be pointed out at the same time that in this connection, there are steps that Detroit can and should take to improve mileage without cutting the margin of safety for motorists. Fuel efficiency can be improved by using more front wheel drive cars, multivalve engines, automatic transmissions with overdrive gears, and more aerodynamic styling to reduce wind resistance. Technological improvements that could be used to improve fuel economy are too often instead being used to make vehicles faster and more powerful.

Furthermore, if achieving enhanced CAFE standards requires down-sizing, there are additional safety features that can be incorporated. No. 1, automatic crash protection such as airbags. There are roll bars, side protection, and automatic rear seat crash protection, as well. In short, if safety is a concern—and it ought to be—then we have a variety of advances at hand to improve the protection of motorists.

The case for the benefits of this legislation is indeed compelling. I do not intend to discuss the environmental benefits at length here, but suffice it to say that auto pollution remains a health hazard in nearly every urban area of this Nation, and fossil fuel combustion is the primary cause of the increase of greenhouse gases. Any measure which has the effect of reducing emissions can only assist in the improvement of America's health and in the reduction of the risk of global warming. Of most critical concern is America's economic vulnerability.

The United States is more dependent on foreign oil today than before the first OPEC oil embargo. America now consumes a staggering total of 17 million barrels of oil per day, 60 percent of it in our transportation sector, and half of it comes from foreign lands. Oil imports are a major contributor to our trade deficit, but more important, this dependency exposes the foundation of our modern economy, energy, to the whims and to the wiles of those whose interests and values may conflict with our own.

The situation in the Middle East is a reminder of that danger. Our presence in the Persian Gulf is foremost an act of principle: That criminal, brutal aggression will not be tolerated by the international community. There is a cost to acting on that principle; thus far, in dollars, and while all us pray it will not be so, perhaps in blood as well. But we should all remember there was also a cost in not acting and allowing Saddam Hussein to invade Saudi Arabia, to cow the other oil producing nations, and to blackmail the industrialized and developing nations of the world.

When this legislation is fully implemented, it is estimated to save 1 in 4 barrels of oil in the transportation sector today. That translates into nearly 3 million barrels of oil per day, a third more than we import from the Persian Gulf now, savings so substantial that they represent a real opportunity to prevent our energy needs from being used as economic and foreign policy leverage against us.

As it stands now, every dollar rise in the price of a gallon of oil drains $3 billion a year from the U.S. economy. If oil prices settle at let us say $28 a barrel, the crisis in the gulf and our dependency on imported oil will drain $30 billion more from our economy this year, and it will be of course much worse at higher prices. The impact of uncontrolled price hikes will be—and they are already being felt by consumers and businesses alike, and industrial users of oil and related energy sources—put under competitive pressures as their energy costs balloon.

Frankly, in aggressively attacking the consumption side of the equation, there are few alternatives as promising as higher CAFE standards to reduce our dependence on foreign oil and enhance our overall economic competitiveness. Greater production of domestic oil from pristine lands or off-shore wells poses a threat to the environment. Switching to alternative fuels would entail greater investment and technological breakthroughs by the automakers than those in response to higher CAFE standards. Increasing gasoline prices through higher taxes could make a difference in the short term, but history shows that Americans soon adapt to higher prices and resume normal consumption patterns.

Mr. President, as I stated at the outset, this vote on the Byron amendment is not a simple decision for any of us. But it seems to me that the competitive and safety risks America runs by adopting this bill are capable of being mitigated by other policy choices which are within our power to take in the very near future. Therefore, I support this measure, despite the risks, because it is the most effective tool we have to cut consumption of motor fuels and reduce our dependence on foreign oil.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I thank the distinguished Senator from Pennsylvania for his comments and for his support of this legislation.

There does not appear to be any other Senator seeking recognition at this point. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I am just going to speak on this issue for a moment. I do not have an amendment to offer. We have amendments that have been presented and are pending in a sense. But I want to make a few comments about the amendment itself and, having not made an oral opening presentation, I want to just touch on some of the items that are directly in the center of this debate and of this bill that I think need to be understood, and which I think pose some real dangers to our economy.

As I rise to speak right now, I just was out in the cloakroom and I looked at the ticker tape. It indicated the stock market today was off again nearly 50 percent in the Dow Jones averages, and at that particular hour, the stock market averages dipped below the previous low point that we had some months ago. So it shows that the stock market itself is under some considerable pressure and it is a result of a whole host of economic events; the fact that the economy is sluggish and perhaps tilting into a recession, the fact that we have a huge Federal budget deficit, huge private borrowing outstanding, we are a debtor Nation with respect to our international financial standing with the rest of the world.

So that there are a lot of distressing signs out there. We have had quite a sharp drop in real estate values in very many areas of the country. And so there are a lot of things that show the stress and strain that is presently there on our economic system. And, as the global economy continues each day to change and to put additional pressure on us, it is coming at a time when there are many things in the United States and our economic trend lines that are not good and are working against us.

But in that vein—I was looking at the stock prices through the close of business on Friday to see how the automobile companies were doing as part of the major list of companies in the United States. It is well to note that the largest single company in the United States is General Motors. Ford Motor Co. is right behind it and Chrysler is somewhere in the top 10 or so. So for the industry as a whole, or taken separately, the three companies are a very significant part of the manufacturing and industrial strength of this country.

If you look at the closing prices on Friday, in the case of Ford, for example, it closed at 33⅞ths. Its dividend yield, based on the existing dividend, was 8.9 percent and selling was roughly five times earnings. That is a very low price/earnings ratio for a major company and particularly one of the quality of the Ford Motor Co.

But I think it is a measure that the capital markets are showing some concern, if you will, about the future prospects in the automobile industry. And so that is reflected in part in the high dividend yield and also in the low price/earnings ratio, the multiplier, as it is sometimes called, with respect to the number of times that the annual earnings are being capitalized in the market value of the stock.

General Motors, on the other hand, closed Friday at 36⅝ths. Based on its current dividend payment, it is yielding 8.2 percent and selling at roughly nine times earnings. That, too, is well below the average of most of the Dow Jones stocks in terms of the price/earnings ratio, price to the underlying annual earnings of the company.

Chrysler at the present time is not showing a deposit of earnings picture, selling at 10⅞ths. It has previously been well up close to 50 or in that area over the last 2 or 3 years. So obviously its situation is also changed.

Now why do I take the time to cite this? I do so because the capital markets are making an evaluation every single day of all of the investment opportunities represented by publicly held companies. And so they decide, for example, whether to put the money, if they are going to buy stocks, into an IBM or Tandy Corp. or into an automobile company or some other company. Or, of course, they can, in fact, take their money right out of the stock market and put it somewhere else, put it overseas, put it in bonds, put it in the bank, put it under the mattress, whatever. We are seeing that today, so far, with the drop on the stock market average on Wall Street that I was just mentioning.

Now it is significant how the markets are valuing the automobile companies in terms of their future prospects and the degree to which they were capitalizing these earnings. I think one of the conclusions that you would draw is that the capital markets are expressing some concern about the future of the domestic automobile industry or we would be seeing stronger

numbers than these reflected in the stock prices.

One of the reasons for that is this amendment, because this amendment proposes some enormous new financial burdens upon the industry and it is not clear where that money is going to come from. And yet, it is going to have to be raised in one form or another because, if we adopt this Bryan amendment, it is going to impose an enormous cost. And the rough numbers, nobody is precisely sure, but the best estimates we have indicate that between now and the middle of the 1990's, when these new fuel economy standards would have to come into effect and be achieved, that the extra capital cost to the industry, the extra capital cost beyond what they now have to spend to upgrade product and to change models and so forth, the additional cost caused by this amendment, would be about $62.5 billion.

Now, it is hard to fathom how much $62.5 billion is, but it is an extraordinary amount of money, and specially at a time when our economy does not have a high savings rate. There is not a lot of equity capital available to go into all of American business, let alone just the automobile part of American business.

Last year, for example, in Japan—just to show you how strong they are in this category and how weak we are by comparison—Japan last year raised and invested in its private sector companies five times the amount of equity capital that we were able to raise and invest in American companies. That is one of the reasons that the Japanese companies and the Japanese economy is surging and that ours is not surging in a comparable way. And in many ways we are falling behind and we are seeing that.

Now, in light of that, any time we have a bill here on the floor, however well-intentioned, that says, we think forcing capital expenditures is good public policy. Let us increase by legal mandate the requirement to get certain fuel economy goals met by 1995, and then further extend those requirements out through the years 2000, and we are going to require that as a matter of law.

And, it is going to require these companies to go out and find and raise an extra $62½ billion. And they are going to have to get it out of these capital markets right now that are not very optimistic about the industry and do not want to pay very much for the stock and, frankly, are not going to be very enthusiastic about providing the $62½ billion that the industry is going to have to raise, in order to meet these new standards.

Now I know my friends who are the sponsors of this amendment are very conscientious people, and I have great feeling and affection for them. But it is a totally impractical requirement to impose on that industry at this time. I am sure there are industries in their regions of the country, of a different sort and different type. If we had a bill in here today that was imposing standards on those industries anything like a brand new and extra $62.5 billion capital requirement, I am sure they would be in here arguing against those amendments. No matter how meritorious the purpose of the amendment might be, the practical effect and the weight of it would be so damaging to perhaps industries that they were familiar with that I think they would find themselves having to oppose it.

Now you might say, well, if the capital costs are that extreme and you have market conditions that are very adverse, and it is going to be very difficult, if not impossible, for the industry to raise this kind of money out of the private sector, then the question would be—if the public benefit to be gained is so great by these higher mileage standards and more mileage efficiency, and if the public benefit is seen to be that great—then the question might well be posed, well then should we take public money, should we invest public money to achieve that public goal?

If we want to take and somehow try to drive technology way beyond anything that the top technologists tell us is feasible over that timeframe, and it is going to cost this much money just to try to do it, and the Government is going to require that it be done, should not the Government then provide the money for it?

Of course, the sponsors of the amendment are not saying that. They are saying, you get the money some other place. We are just going to tell you what you have to do, but you are going to have to figure out how to do it and you are going to have to go get the money yourself to pay for it.

Where do you suppose they are going to get the money, if they get the money at all? Where are the auto companies going to get it? If they can raise the money and redesign all the cars that are now coming down the track, 2, 3, 4, 5, 6, 7 years ahead of us, they are going to have to put that cost in the price of the cars. They are going to put the cost in the price of the cars because somebody is going to have to pay the money. The person who is going to end up having to pay the money is the consumer who buys the car. So somebody is going to get stuck with this bill, assuming that the capital can be raised which I think is terrifically difficult under the circumstances we see right this very day in the capital markets and because of the fact that the people who are in charge of technology tell us that these are blue sky projections.

But the fact of the matter is if we plow all this money in, it is going to get tacked right on the price of the car and we are all going to pay it as consumers. We paid for a lot of the efficiencies that have already been developed over the last 15 years. We have talked about the fact that since the midseventies, about 1,200 to 1,500 pounds has been taken out of the weight of the average car. It has been a very sophisticated, difficult exercise to do that, to reduce the weight and the wind resistance so the mileage would improve and at the same time maintain good safety performance and also have good auto emissions performance. Because those two things cross relate and are connected to what you can do with respect to fuel economy.

So, over that 15-year period of time we have taken roughly 1,200 to 1,500 pounds out of the car. So we have had a very substantial increase in miles per gallon that we now get.

But we are now getting toward the very outer bounds of what we can do with respect to just taking weight out of cars because we have taken most of the weight out of the cars. Now, if we want to take more weight out of the cars so they are lighter and get higher miles per gallon, cars have to be made smaller and more compact and they have to look about like the cars we see today that are for sale that get 40, 45, 50 miles a gallon that are for sale in almost every automobile dealership in the country.

They are there today but people are not buying them because people do not want them. About 3 percent of the American people buy those kinds of cars because they are so small and really quite unsafe because they are so small and because we do not have as much protection because we do not have as much car around us in an accident situation. So we have cars like that and, in fact, the authors of this amendment can put the industry and the country on a forced march to end up so all cars look like that. But I do not think that is a wise decision and I do not think that is what people want. I think if people were able to participate fully in this debate and see these tradeoffs and could vote right here—if we could just plug everybody right in the voting machine and let everybody vote—they would not vote for that because it is not a practical answer.

Oftentimes, even with the best intention in drafting and putting forward legislation, we end up with answers that are not terribly practical. This is a classic example. This is an amendment that, when we get down into it, is not a practical amendment in large part because of the enormous capital requirements.

I am going to yield the floor in a minute because I see the Senator from Missouri here. I think he has an amendment that he wants to offer.

But we talked about millions and billions and trillions, and it is very hard to understand how much money we are talking about. I think when somebody wins 1 million in a State lottery, for example, that that is a lot of money. It is seen as a lot of money. But if we compare $1 billion to $1 million, we start to see the difference between these.

For example, if you won $1 million in the lottery and you went down to collect and they gave you brand new $1,000 bills and they gave you a stack of brand new $1,000 bills and it finally added up to $1 million, it is a stack about 8 inches high. That is $1 million dollars' worth of $1,000 bills, brandnew ones, if you win the million-dollar prize in the lottery.

But if you stack brandnew $1,000 bills until you have $1 billion, you have a stack higher than the Washington Monument. So you have a stack higher than the Washington Monument in comparison to 8 inches here; that is the difference between a billion and a million. We are talking about 62½ stacks of brand new $1,000 bills, higher than the Washington Monument, to pay for this amendment. And the stock market is telling us today and Friday and every other day that the money is really not there to do that because it is really not a practical, economic allocation of resources.

I said the other day that in other countries where fuel costs are much higher than here, $3, $4 a gallon, like in Japan and parts of Europe, that in those particular areas they have not been able even with those financial incentives to develop more fuel efficient cars, to be able to make the kind of breakthroughs in fuel efficiency that this bill, sort of with the wave of a wand, says will happen. So it is impractical on its face for financial reasons.

I will yield, saying, bringing it back down to the human side, the Senator from Illinois, Senator SIMON earlier offered the amendment that would deal with the job impact of this because we are going to lose tens of thousands of jobs, good jobs and important jobs in our manufacturing economy in the United States. That is one of the few things that is maintaining our international financial strength. This amendment is going to eliminate those jobs.

That is why there is an amendment pending to at least have the Government come in and provide some job assistance help for people who are going to lose their jobs. But there is a human dimension to this as well and an awful lot of people are going to get hurt by this amendment.

I could go on about the other reasons as to why this particular amendment is not wise at this time but the $62.5 billion of additional capital requirements is one that I think really needs to be considered today, particularly as the stock market seems to be continuing its downward slide.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The chair recognizes the Senator from Washington.

Mr. GORTON. Mr. President, will the Senator from Michigan answer one or two questions of this Senator about his amendment calling for a national energy policy plan before this Senator speaks on another subject?

Mr. RIEGLE. I would. Let me get it in front of me. My colleague is referring to the one that we sent to the desk a half-hour ago?

Mr. GORTON. Yes. The distinguished Senator from Nevada and this Senator have gone over the text of that amendment, and speaking for both of us we agree with the general thrust of the amendment, the desirability, obviously, of a comprehensive national energy plan. We have a couple of concerns with it and we wondered whether or not the Senator from Michigan can deal with them.

Obviously, in connection with this proposal as the Senator from Michigan said to me earlier, as a result of one of my questions, it is an add-on. Equally obviously, the Senator from Michigan does not like this bill at all and he has explained his reasons. We want to cooperate with the Senator from Michigan to the greatest extent that we can. We do not want to see ourselves accepting an amendment which destroys the philosophical basis for our bill.

As a result, I ask the Senator whether or not he regards it as entirely essential to his amendment that, in the fourth of the subparagraphs, beginning with "Whereas the United States needs a comprehensive"—obviously the Senator has talked about this bill being undesirable as being piecemeal. It seems to us that, "needs a comprehensive national energy policy meeting the following criteria" solves, in a neutral fashion, what the differences are between us.

Our question is whether or not the Senator is willing to take out those three words, "not a piecemeal"?

My second question is more for informational purposes than any other.

Mr. RIEGLE. Should I maybe deal with the first question?

Mr. GORDON. Go ahead, please.

Mr. RIEGLE. I am open to a change in language. I do not know if the word piecemeal is particularly offensive. If it is I am willing to look at a substitute. But it is an important part of the amendment in the sense that I want to make it clear that a bits and pieces strategy is not going to get the job done. Even if one of the bits and one of the pieces in some form end up being part of the comprehensive strategy later, it is important that we not mistake one for the other.

In other words, we cannot take discrete elements, nor should we, and think that somehow or another we have, in effect, provided a comprehensive and wall-to-wall national energy strategy.

So I would be open to some other phraseology, but I do want to establish the point we are not talking bits and pieces, we are talking about the whole thing. I do want to establish that in this context.

Mr. GORTON. It is the view of this Senator and the Senator for Nevada that the word itself, "comprehensive," does that in an affirmative fashion. The second phrase is a negative one. We would prefer that we deal with it strictly as an affirmative matter.

My second question is: What is the meaning of the phrase, in the third from the bottom line of the resolution, "within 6 months of enactment?"

It is our understanding that the President intends to submit the plan now under study by the Department of Energy in less than 6 months from the debate which we are here engaged in today and because most Members have serious reservations about whether this bill will, in fact, be enacted this year, that phrase could be taken to mean that we can delay this forever. It is only a sense-of-the-Senate resolution which is a part of a Senate bill which may or may not become law and 6 months from today may be longer than needs is to be taken.

Will the Senator not agree that it might be better to say by January 1 or by February 1, 1991—put a date in here that we mean? We want a national energy policy. We do not want its submission depending on the passage of this bill, which the Senator from Michigan opposes. Should we not put a specific date in there?

Mr. RIEGLE. I think that is a reasonable point. I think we are really talking about the same thing because this is, of course, predicated on the notion that the bill is enacted. So this carries with it the timing of getting it enacted as it has been presented here.

The presumption that is built into this amendment is the notion that it will be done still this year, this legislative session, and that would give us the 6 months that would run after the date the President signed it.

I gather he has said or his surrogates have said he will veto this bill. I have not heard those words out of his mouth, but that is certainly the message that is coming out of the others in the White House, as I am sure the Senator knows. What I have in mind here is, in fact, something like midyear next year. So going to a fixed date is something I want to think about a little bit before making that change here as I stand.

Let me just say my view would be that with or without this amendment,

with or without the Senator's bill, I think by midyear next year, if we have not taken these energy recommendations that are going to be forthcoming from the Secretary of Energy, and given the presumed support of the President himself in taking them up and acting upon them in a timely fashion as a top priority item within the first 6 months of next year, I would view that as a grave error. I think we are trying to catch up for lost time now. That is certainly what I am arriving at.

Mr. GORTON. The Senator has now given me a different view of the urgency of his own feeling. My scanning of the way this is written leads me to believe that within 6 months of enactment refers to the time at which the President should submit this proposal, not the time within which the Congress should act on it. If the Senator from Michigan believes that we should have acted upon this by, say, the first of July 1991, I strongly suggest that he rewrite this with a specific date and make sure he places it in that sentence in a position which indicates the Congress should have done more than receive it; it should have received it and done something about it.

Mr. RIEGLE. Bear in mind, when it says within 6 months of enactment, it does not assume the President waits until the last day of the 6-month period. It fully presumes if he gets his operation to move at that speed that he could present us with a comprehensive energy plan any time. I expect it at the front end of that period of time.

The clear intention I have in drafting this is that it would come within that period of time, hopefully, on the front end of the 6-month period of time, and that the Congress should review and revise as is necessary and go forward with it, including appropriate legislation to implement such plans. In my mind, at least, I do not find that very confusing. I find that a very tight deadline and a statement of purpose that the President will provide such a set of recommendations and that we would move with all speed to get them enacted.

Mr. GORTON. In any event, Mr. President, these are the suggestions the Senator from Nevada and I have. They are two relevantly minor in nature. We think a greater degree of clarity and a more specific set of deadlines in that last paragraph would help. We would much prefer to speak of a national energy policy in the affirmative rather than in the negative. I think the word comprehensive does so. If the Senator from Michigan would consider those two suggestions, I think that they would improve his resolution, and he would probably end up receiving a unanimous or near unanimous vote for it.

On another subject, Mr. President, we see the Senator from Missouri on the floor and I believe ready to propose an amendment.

If this Senator understands the parliamentary situation, we are now already three deep in amendments. We have had some debate, perhaps a conclusion of our debate, on the amendment of the distinguished Senator from Illinois [Mr. SIMON].

We have had a brief explanation from the Senator from Oklahoma on his proposal which would impose CAFE standards on vehicles owned and operated by all of the agencies of the Government of the United States.

The Senator from Nevada and I have discussed that proposition with the Senator from Oklahoma. We will either have a second-degree amendment for that amendment or we hope an agreement on a modification which will make the amendment acceptable to the two of us.

And the third deep is the sense-of-the-Senate resolution proposed as an amendment by the Senator from Michigan.

But I believe we are ready at this point to go forward with the Senator from Missouri and he has one amendment which we can agree on.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, it is my understanding that there is an amendment pending. Therefore, I ask unanimous consent that the pending amendment be laid aside and that it be in order for me to offer in succession two first-degree amendments.

The PRESIDING OFFICER. Is there objection? Hearing none, the pending amendment will be laid aside.

AMENDMENT NO. 2754

(Purpose: To clarify the definition of "small passenger automobile" for purposes of the airbag credit)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], proposes an amendment numbered 2754.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, lines 7 through 10, strike all and insert in lieu thereof the following:

"(B) For the purposes of this paragraph, the term 'small passenger automobile' means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon.".

Mr. DANFORTH. Mr. President, when this legislation was being considered in the Commerce Committee, an amendment was offered and agreed to relating to airbags in small automobiles. The amendment provided that automobile manufacturers would receive a 10-percent CAFE credit for installing airbags in small cars—5 percent for the driver's side and an additional 5 percent if an airbag were installed on the passenger side.

This was done in recognition of the fact that the sale of compact cars and subcompact cars did present us with a safety problem and that we should address the safety problem at the same time we were addressing the energy problem.

The definition that we used in the legislation was one that relied purely on the length of the wheelbase, and we provided that the credit for the airbags was going to be available for cars that had a wheelbase of less than 100 inches.

Since the Commerce Committee dealt with this legislation, it has been called to my attention that wheelbase is not the only way of measuring the size of an automobile. It has been suggested that greater flexibility could be given to the automobile companies to put airbags in small cars if we had alternative definitions, one relating to the 100-inch or less wheelbase and the other relating to so-called curb weight of an automobile.

This amendment then would provide that the credit for the installation of airbags would be available either to cars where there is a curb weight of 2,750 pounds or less or a wheelbase of less than 100 inches. So that is the amendment, and I believe this has been run by both sides. I know of no controversy relating to the amendment.

Mr. BRYAN. Mr. President, I thank the distinguished Senator from Missouri for his constructive amendment. There is no objection to it on this side of the aisle.

The amendment of the Senator from Missouri has been offered in a spirit of improving the legislation and in no way derogating from it. There are those who have sought to invoke the argument that, indeed, this legislation makes automobile travel less safe in America. That is a fallacious argument.

From the type of constructive approach which the Senator from Missouri has offered, as well as his support over many, many years on highway traffic safety, serving with him as I do on the Commerce Committee, I know of his longstanding interest in that.

I note, as he has on prior occasions on the floor, it has been 8 years since we have had a reauthorization of the National Highway Traffic Safety Administration, in which there are many, many provisions which will enhance and improve the safety of the automo-

tive fleet, not only the airbags as he is encouraging with the credit provision but we have labored in the vineyards at least in the last year and a half since I have been a member of the committee to try to encourage side impact standards.

I commented during the hearing we had on S. 673 that we placed a man on the Moon in a shorter period of time from the challenge President Kennedy issued in the 1960's than we have in getting the side impact standard, and we still await that standard being promulgated, as the distinguished Senator knows.

There are a whole host of the other things. But I do commend him for automobile safety and acknowledge that his amendment will be a constructive addition to the bill.

Mr. GORTON. Mr. President, I join my distinguished subcommittee chairman, the Senator from Nevada, in saying that this is not an amendment which the sponsors of the bill reluctantly accept in order to get the bill further down the road toward passage. It is one which we enthusiastically accept because we recognize the vital importance of safety on our highways.

We believe that the incentive which is given to manufacturers to increase that safety is quite appropriate. We believe by the passage of this amendment that we should—and we do not think we will have heard the end of the arguments on the other side—put to rest the arguments by those who say a bill of this sort will hurt highway safety. We are convinced that it will enhance highway safety and this amendment will contribute greatly to that end.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 2754) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider that vote.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2755

(Purpose: To remove the cap on increases in average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles)

Mr. DANFORTH. Mr. President, I send my second amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], for himself and Mr. BURNS, proposes an amendment numbered 2755.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following new section:

MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

SEC. . Subsection (g) of section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) is amended to read as follows:

"(g) AMENDMENT OF AVERAGE FUEL ECONOMY STANDARDS.—In carrying out section 502(a)(4) and (f), the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.".

Mr. DANFORTH. Mr. President, it is conceivable that this amendment is somewhat more controversial than the previous amendment. It deals with alternative fueled vehicles and it deals with legislation that we passed entitled the Alternative Motor Fuels Act of 1988. This amendment, if it is adopted, will make the bill considerably more acceptable to a number of parties who are now opposing the legislation, although there are those who would continue to oppose it whether or not this amendment is agreed to.

The purpose of this amendment is to make it much more practical for automobile manufacturers to meet the CAFE requirements by producing automobiles that are capable of burning alternative fuels as opposed to downsizing the automobiles.

A number of people have pointed out that automobiles that are downsized, even if equipped with air bags, are not as safe as cars that are somewhat larger. A number of people have pointed out that automobiles that are very small are less likely to be made in the United States. So one way to deal with this situation is to provide meaningful incentives for automobile manufacturers to produce automobiles which have the capability of burning something other than products that are based on oil.

I think it was 1984, I and other Senators introduced a bill which would provide CAFE credits for cars that could burn alternative fuel, and we struggled with that legislation for some period of time. Then, fortunately, back in the last Congress Senator ROCKEFELLER took a very keen interest in this legislation, and he was successful, where we had not been successful, in having the Alternative Motor Fuels Act enacted into law.

However, at the time it was enacted, an amendment was added to it which very significantly reduced the value of the incentive that we had provided when we conceived of this legislation in the first place.

In order to understand the issue that is involved it is important to distinguish between two types of alternative fueled vehicles. One is a vehicle which is totally dedicated to the burning of an alternative fuel: methanol, ethanol, some other type of fuel. It is possible to manufacture automobiles that can burn methanol and can burn nothing but methanol. It is also possible to produce automobiles that can burn ethanol and nothing but ethanol.

In the case of a dedicated vehicle, we provided in the legislation passed in 1988 that that vehicle be considered as though it is burning no gasoline at all because it is not burning any gasoline.

There is a practical problem with dedicated vehicles at this point in our history. Let us suppose a dedicated vehicle were manufactured, burning something like methanol produced from coal. Imagine that you went out and bought a vehicle that was capable of burning methanol. What would you do when the tank ran dry?

And the answer is you would be out of luck. You would have a car that just could not function because there are very few places in the United States, if any, today where somebody can drive into the local gas station and say fill her up with methanol, or fill her up with ethanol.

So as a practical first step toward getting to the dedicated vehicles, it has been important to provide incentives to create something called a flexible fuel vehicle or an FFV. An FFV is something that can burn anything. It can burn gasoline; it could burn methanol; it could burn ethanol, thereby giving the owner of the FFV the assurance that if he was, for example, on the road between Washington and Kansas City, he could pull into any gas station, regardless of what he had in his tank, fill it up with something else, and be on his way, and would not be caught high and dry. That is the importance of having as an intermediate step on FFV, a flexible fuel vehicle.

What we did when we originally conceived of the legislation was to provide for a partial credit for an automobile that was capable of burning both gasoline and something else. The way that credit was worked out was a formula. It was assumed that there would be a 50–50 mix. Why 50–50? Why not 50–50? It seemed like a reasonable number.

Then there was a further computation for the energy values of the alternative fuels. So that, for example, in the legislation that we were working on, and in fact the legislation that was passed in 1988, an FFV that gets 25 miles per gallon on a 50–50 mix would be rated at 38.5 miles per gallon for CAFE purposes. That was the theory of the legislation.

The reason for the legislation was to deal with what could be called a chicken and egg situation. The automobile manufacturers are not going to manu-

facture cars that will not sell. Automobile manufacturers will not manufacture cars that are dedicated to alternative fuel because people will not buy them because there is no alternative fuel market right now.

So in order to get automobile manufacturers to get into the business of alternative fuel, we conceived of this FFV concept. The problem arose in the 1988 legislation because an amendment was offered to the bill which capped the credit for the flexible fuel vehicles. And the cap was extremely tight and extremely onerous. It was provided in the 1988 legislation that the maximum amount of credit that a manufacturer could get for manufacturing a flexible fuel vehicle was 1.2 miles per gallon until the year 2005. After 2005, from 2005-08, it was to go down to nine-tenths of a mile per gallon.

That is such a puny little credit that the result is that in effect we passed legislation that said we are going to provide automobile manufacturers a real incentive to manufacture vehicles that can burn other types of fuel, but then we are going to take that incentive away from the manufacturers. We spoke out of both sides of our mouths, and the result of speaking out of both sides of our mouth is that nothing has been done. The industry has not taken off as we hoped it would take off, and really there is no possibility that it will.

My hope in offering this particular amendment is that we can restore the concept of the legislation that was first introduced 5 or 6 years ago, and that we can create automobiles that are capable of meeting the fuel efficiency standards which are sought by the sponsors of this legislation without necessarily manufacturing those automobiles in Korea or Yugoslavia; and that we can meet those standards and provide automobiles that are not tiny putt-putts; that we can give the American consumer the possibily of driving in a somewhat more comfortable automobile; and we can give American car manufacturers the ability to produce competitive automobiles which burn something other than gasoline.

If America is less energy dependent, it makes little difference whether the cause of that lesser dependence is that we are driving very small automobiles or driving automobiles that are burning something other than gasoline. As far as national energy policy, the question is how dependent are we on foreign sources of fuel?

Obviously, the question is going to be asked: Well, right now, people might prefer gasoline. Let us say that Mr. Jones owns an alternative fuel car, and he prefers to burn gasoline rather than methanol, rather than ethanol. Let us suppose that methanol is still not readily available. Should the auto companies still get the credit? My answer to that question is obviously yes.

Why obviously yes? Because I think that, at least in the short term, it is less important how much gasoline an automobile, a particular automobile is actually burning, than that the economic incentives exist to produce something other than gasoline to burn in cars. As a matter of fact, if we have automobiles that are capable of burning something other than gasoline, then the potential supply of alternative fuels itself should operate as something of a break on runaway oil prices.

And conversely, if oil prices do go through the roof, then the incentives exist for the fuel manufacturers to produce fuel out of coal or corn or biomass, of some other substance.

So the economic arguments are very real, even if in the short-term alternative fuel vehicles are in fact burning mainly gasoline. I do not understand how we are going to get to alternative fuel vehicles unless we do it through the pathway of the so-called flexible fuel vehicle. That is what the amendment is all about.

Mr. President, obviously there are interested parties in this particular amendment because when we talk about alternative fuel we are offering the possibility that there will be some beneficiaries in our economy if we move to alternative fuel.

For example, American automobile manufacturers are more likely to be competitive if they have the option of the alternative fuel vehicle than if they do not have that option. For that reason, the American manufacturers do support this amendment, and so do the United Auto Workers.

Mr. President, I ask unanimous consent that letters from General Motors, from the Chrysler Corp., Ford Motor Co., and from the United Auto Workers be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

GENERAL MOTORS CORP.,
Washington, DC, September 20, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: Shortly, the Senate is expected to resume consideration of S. 1224, the fuel economy bill introduced by Senator Richard Bryan. General Motors is strongly opposed to this bill. We believe that it will severely disrupt our ability to provide the types of vehicles Americans want and need—affecting consumer choices, the safety of Americans on the highways, and jobs in the automobile and related industries. We urge you to oppose attempts to limit debate on the bill and to vote against it on final passage.

We understand that during the debate on the bill, you may offer an amendment to remove the limits on the amount of fuel economy credits available to manufacturers who produce dual fueled vehicles. This "cap" on credits was established during consideration of Senator Rockefeller's alternative fuels bill in the last Congress. We supported enactment of the Rockefeller bill, but we did not favor inclusion of the cap.

General Motors has long maintained that if a goal of more widespread use of alternative fuels is to be pursued, approaches based on incentives are greatly preferred to, and would be far more effective than, "command and control" mandates. This whole area deserves a more comprehensive review. Many incentive approaches, aimed at either the vehicles to be produced or the fuels themselves, are possible. We believe that your proposal to remove the cap on CAFE credits would enhance the right type of incentive program for the development of alternative fueled vehicles.

Even if this amendment is adopted, however, we believe that S. 1224 should still be defeated, because the bill is so fundamentally flawed. The expansion of CAFE credits by removing the cap which applies to variable fueled vehicles will not overcome the serious conflict at which we will be placed with our customers and their needs in trying to comply with the proposed standards of the Bryan bill.

We urge you to vote against cloture on and final passage of S. 1224!

Sincerely,

JAMES D. JOHNSTON.

CHRYSLER CORP.,
Washington, DC, September 19, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: As you know, Chrysler strongly opposes passage of S. 1224 because it sets CAFE standards at levels and in a time frame which are unachievable in any practical way. It would require a 7 mpg increase for Chrysler's average car fuel economy in four model years from today. We understand your intent to offer an amendment which would remove the cap on the credit which is available to manufacturers for the production of vehicles capable of running on alcohol fuels and/or gasoline. Given the totally unrealistic requirements contained in S. 1224, we would support your amendment to the bill in the Senate this year.

We wish to emphasize that if your amendment is adopted, we would continue to oppose the bill. The inclusion of additional credits does not justify the imposition of unrealistic CAFE standards. We strongly hope that next year, when the Senate again considers CAFE, the Senate Commerce Committee will not include your amendment in its bill as a justification for unrealistic standards and time frames.

We are grateful for your assistance on this bill this year, and look forward to working with you as the CAFE issue is considered again in the next Congress.

Sincerely,

BOB PERKINS.

FORD MOTOR CO.,
Washington, DC, September 19, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: Thank you for the opportunity to express our views regarding your proposal to increase the potential CAFE benefit which would be available for production of dual energy vehicles pursuant to the 1988 Alternative Motor Fuels Act.

As we indicated in our September 19, 1990, testimony before the House Energy and Power Subcommittee the ". . . role . . . al-

ternative fuels play in diversifying our energy base, . . . how this role relates to environmental priorities . . . and the relative benefits of this approach versus CAFE" are issues that should be considered as part of a comprehensive energy policy. Your amendment also recognizes the need to encourage the study and development of alternative fuels.

We believe strongly that a comprehensive approach is required with respect to our future energy policy. Our present policy, which focuses almost exclusively on new cars and trucks using a "command and control" approach, we believe is not appropriate in the future. The provisions of S. 1224, which perpetuate and, in fact, amplify the problems of the current policy and require substantial increases in sales-weighted average fuel economy without benefit of thorough study of technical feasibility, consideration of the effects of safety and emission standards, and benefit of market studies to ascertain customer acceptance with the cars and trucks that would result.

The problems inherent in S. 1224 cannot be resolved by the addition of CAFE incentive for production of alternative fuel vehicles; and therefore, we would continue to oppose S. 1224 whether or not your amendment is adopted. However, in the context of this bill, this year we would support your amendment to remove the cap on alternative fuels credits.

We continue to believe legislative action on any CAFE increases should not be taken until a thorough study is undertaken which looks in detail at the above issues and at the broader issue of an integrated and complementary approach to energy policy.

Sincerely,

ELLIOTT S. HALL.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, September 18, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: We understand that you may be offering an amendment to S. 1224 which would remove the "cap" on the alternative fuels credit that is now part of the federal fuel economy statute. As you know, we oppose S. 1224 because we believe the standards that it proposes (a 20 percent increase above the existing standard in 1995 and 40 percent in 2001) cannot be achieved with existing technology.

Under such circumstances and unless new technology to achieve the standards could be developed, the manufacturers might make drastic changes in their product mix which could result in plant closings and job loss for workers in the automotive and related industries. We cannot support a bill which could place in jeopardy the jobs of the workers we represent.

In the context of this bill, this year, we would support the amendment you may be offering. Even if your amendment were adopted, however, we would hope that Senators would oppose S. 1224.

Our hope is that this measure can be put off until the next Congress when it might be possible to develop legislation with standards which we can support because we do not oppose an increase in the fuel efficiency standards. It is S. 1224, as it now stands, that we oppose.

Sincerely,

DICK WARDEN,
Legislative Director.

Mr. DANFORTH. Mr. President, because of the possibility of automobiles burning ethanol, those who are interested in providing more outlets for American agricultural production are supportive of this amendment.

I ask unanimous consent that letters in support of the amendment from the American Farm Bureau and the National Corn Growers Association be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, September 21, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: The American Farm Bureau Federation strongly supports your amendment to S. 1224 which would provide to automobile manufacturers additional incentives for manufacturing alternative fuel vehicles.

Sincerely,

JOHN C. DATT,
Executive Director, Washington Office.

NATIONAL CORN GROWERS ASSOCIATION,
Washington, DC., September 19, 1990.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: As President of the National Corn Growers Association (NCGA), I am pleased to inform you of our organization's endorsement of your amendment on Flexible Fuel Vehicles to the Motor Fuel Efficiency Act of 1990.

This period of energy uncertainty highlights the need to cut our dependence on foreign oil. Your amendment would encourage automobile manufacturers to develop and build cars which run on higher levels of alternative fuels such as ethanol. This would lessen our dependence on imports, create jobs and improve the quality of our air.

The members of NCGA appreciate your efforts on this important issue.

Sincerely,

ALAN KEMPER,
President.

Mr. DANFORTH. Mr. President, I have spoken with Mr. Boyden Gray, White House legal counsel, about this amendment. The position of the administration is that they support the amendment. However, whether or not the amendment is agreed to, they do not support the bill. So for whatever it is worth, those who want to support the administration at least half of the time can support this amendment. I do not have anything from the coal miners or the coal producers but, obviously, if there is a way of putting our coal production to good use in this country, they would be supporters, as well. I might say, however, that probably in the near term, say in the next 20 years, most of the methanol that is produced would not be produced from coal but would be produced from natural gas.

So, Mr. President, that is the nature of the amendment. It does undo a part of what was done in the 1988 legislation. But the caps that were placed on the credit for flexible fuel vehicles in that 1988 legislation really served to be very counterproductive to the whole thrust of the legislation. Given the fact that these caps were placed on the credit, we may as well not have gone to all the effort and trouble to try to pass the bill in the first place. It turned out to be kind of a useless piece of legislation. But if this amendment is agreed to, the 1988 Alternative Motor Fuels Act would become highly useful legislation, allowing us to meet the CAFE requirements of this legislation in a way that is in the best interests of the American auto worker and the American automobile manufacturers, in a way that is in the best interests of the American farmers seeking to sell more ethanol, in a way that is in the best interests of the American coal miners, and I think in the best interests of our economy as a whole.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Nevada [Mr. BRYAN].

Mr. BRYAN. I thank the Chair.

As always, our colleague from Missouri has offered a very thoughtful amendment, one that has provoked considerable discussion within the staff that has worked together with the distinguished Senator from Washington in processing this legislation.

I must say, Mr. President, that I certainly agree with the objective that the Senator seeks to achieve; that is, I do believe it is desirable to encourage the automotive industry to manufacture, to produce, to market more flexible fuel vehicles, for all of the reasons which the Senator so persuasively outlined. There may be a basis upon which we can address his interests and concerns, not by eliminating the cap entirely, but by modifying it.

The Senator touched briefly upon the thrust of the objective. The thrust of the objective is simply that, although flexible fuel vehicles, by definition, as he has shared with us, are desirable in that they make the owner/driver of the vehicle able to select from choices of fuel other than gasoline, which is clearly in the national interest, there is no mechanism to determine whether in fact the owner, the driver, will do so.

So, although the concept of the credit in the amendment as offered by the distinguished Senator from Missouri provides some encouragement to the manufacturer, it still does not assure us that, indeed, we will be saving fuel in the sense of the traditional gasoline-propelled option which, for most vehicles on the highway today, is the only option.

I am somewhat reluctant to completely abandon the cap in its entirety. I wonder if I might inquire as to whether the Senator would be willing to have our staffs work to see if we can

work out some kind of a compromise to enhance the incentives, the CAFE credit that he wants, and yet leave some ceiling, some cap, some restraint that does not completely eliminate that, because I share his objective.

I think the Senator offers some food for thought here that ought to be part of a national energy policy to encourage alternatives—ethanol, natural gas, and other things that may be on the horizon that we may not even be contemplating in the context of that debate.

I wonder if my colleague is willing to respond to that.

Mr. DANFORTH. I am always willing to discuss virtually anything with the Senator from Nevada. I point out that if the cap is eliminated, which is what I think should be done, the result will not be 100 percent credit for something that is a flexible fuel vehicle. It is only a partial credit with or without the cap. That was the way the legislation was written back in 1988.

As I pointed out earlier, a car that could get 25 miles per gallon on gasoline would still be rated only 38.5 gallons as a flexible fuel vehicle. So I think that the concept of a limitation is built into the plan as it was originally conceived.

The difficulty of the cap that was put in place in 1988 is we really said to the automobile manufacturers: Here is a great idea. Please proceed on it. But, by the way, we have our fingers crossed.

And we do not really need a cap. So we gave an incentive with one hand, and we took it away with the other hand in the same legislation, and then put out our press releases. I was one who certainly did, and said what a wonderful thing we had done. And we had not done anything at all. We just denuded the whole effort.

I would be happy to look at anything, but I think that we should decide whether we want real incentives or whether we do not want any incentives. If the concept is worth doing, then let us send a clear message, not a muted message. If the concept is worthwhile, let us get on with it and not equivocate in doing so.

As I pointed out in my remarks, I understand that a lot of automobiles that would be produced, that are capable of burning anything, would at least begin by burning gasoline. But the fact that anything else is available means that there would be another source of supply, and that is, in my opinion, what we should be trying to create. If the problem is that we are too dependent on other sources of energy, then let us create alternative sources of energy when oil is dried up.

The Iraqis would not have their hands around our throats right now if people could go out and buy something else to put in their cars. Whether they are doing it today or not, if they could do it tomorrow, it would have the same economic effect. I am told in California, which has tough air quality standards and has a difficult time meeting those standards, some methanol is being used, and that the present price of methanol equivalent of a gallon of gasoline is $1.33. It already is competitive in California because it is being used in California, although in smaller quantities because the cars just are not there.

So I think if we were to produce an incentive for the auto companies to manufacture something that was capable of burning anything, the effect of that would be that we would, in fact, be finding methanol that was available; we would in fact be finding ethanol available not just in 10-percent quantities, but whatever amount you want to put in your tank.

As everybody knows, we have an abundant supply of corn on this country, and we have an abundant supply of coal in this country. If we could solve the problem of energy dependence and at the same time did give a leg up to our U.S. auto manufacturers and our U.S. corn growers and our U.S. coal miners, what a positive thing that would be.

I remember the eloquent debate that was offered in the Senate by Senator BYRD a few months ago, relating to the plight of the coal miners in the United States. Here is a potential use of American coal and it would be environmentally clean.

So this is not simply an energy issue, it also is an environmental issue. Cars that burn methanol, cars that burn ethanol are less of a pollution problem than cars that burn gasoline or diesel fuel.

Mr. BRYAN. Mr. President, if I might, just by way of brief rejoinder, I am sure that an amendment that enjoys the support of General Motors, Chrysler, Ford, United Auto Workers, and American agriculture has much merit, in addition to the forceful and eloquent presentation made by the distinguished Senator from Missouri.

What I would suggest that we do, if the Senator is amenable to it, and we have some time left during the course of this debate this afternoon, if I could inquire again if he would be willing to have our staffs work together to see if we can reach some kind of accord on this. If we cannot, then I respect the Senator's right to wish to proceed further in debate, because I do agree with the objective.

I was in Detroit, I might indicate, just a couple months ago, and I was pleased and, frankly, encouraged, Mr. President, that indeed there was a great deal of talk about the FFV—the flexible fuel vehicle. So I do think that the Senator's long-term strategy is a correct one.

As we know, there is some concern about what the elimination of the cap does, entirely. I would like an opportunity to review that further before giving the Senator a firm commitment as to whether or not this amendment could be accepted.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington [Mr. GORTON].

Mr. GORTON. Mr. President, I join with my distinguished colleague from Nevada, both in being intrigued by the positive impacts which this amendment can have on energy independence and, as the distinguished Senator from Missouri knows, that has been one of the focal points motivating my support for this bill.

I guess that I also share some of the same reservations of the Senator from Nevada, and I will put it to the distinguished Senator from Missouri as we work this out, that one of his examples ended up by troubling this Senate. The example he gave was that an automobile, which makes 25 miles per gallon on gasoline, if it were capable of using alternative fuels would be allowed to be treated by the manufacturer as though it received, I think the Senator from Missouri said, 37½ miles per gallon.

Mr. DANFORTH. Thirty-eight and a half; that would be a car that would be the rating of a flexible fuel vehicle that got 25 miles per gallon on gasoline.

Mr. GORTON. Correct.

Now that 38½ miles per gallon is higher than this CAFE standards bill requires for the middle of the decade of the 1990's, and almost as high as required after the turn of the century.

It may be an unbased fear, but the concern I have is the production of a farily substantial number of automobiles of this nature which, in theory, can use alternative fuels, which, in fact, do not use alternative fules and which, therefore, transfer a CAFE standards bill designed to increase the average fuel economy in the United States into one which authorizes those standards to go down.

I recognize that while this is mathematically possible, it seems to me to be highly unlikely that we will have that large a percentage of the automobiles manufactured in the United States capable of taking two or more different fuels. But, nonetheless, the possibility is there.

If I can advance the request made by my colleague from Nevada one step further, I am not so much concerned even by this formula as I am by the proposition that there ought to be some floor under the formula. I do not think that the Senator from Missouri wants to create a situation in which the average fuel economy of gasoline-powered automobiles actually declines as a result of the use of the formula

or, for that matter, that it fails to go up even if it goes up at a more modest rate than would be possible without this amendment.

So as we search for a solution on it, that, at least expresses the concern of this Senator, the mathematics of this amendment would actually allow a CAFE standards bill to be something which decreases actual fuel economy in the United States of what will be used over the course of the next 5 or 10 years. I do not think any of us would wish to do that.

Mr. DANFORTH. Mr. President, I do not think that mathematically that would happen. But I would say if we are interested in increasing the supply of what can be burned in our automobiles, then we are going to be less energy dependent.

It seems to me that the goal that is before us and obviously the triggering event of bringing this legislation to the floor is to make us less dependent on Iraq, Kuwait, the Middle East. There are couple of ways to do that.

One is to drive little cars. If we drove little cars, and that is the theory of the bill that is now before us, then we would be using less oil; we would be less dependent on the Middle East. We would have some people who would be hurt by that; they would be less safe; the American automobile companies would be less competitive than they are today as a result of this.

Therefore, it seems to me that what we should do is to try to find some other way of meeting the objective, the objective being less dependency on foreign sources of oil.

And the other alternative to the putt-putt concept, is to increase our domestic sources of available fuel. And we can do that. We recognized that in 1988, except that what we did when we passed the legislation in 1988 is to give with one hand and to take back with the other. If we remove the cap that we placed in the 1988 legislation it will have the effect of increasing the available supply of domestic energy, if the auto companies choose to use it. If they do not use it, all right, we are no worse off.

But this amendment, if it has any effect on CAFE requirements at all, will have that effect because we are actually producing automobiles that can burn any amount of ethanol. We do not have those cars now. It would be folly for somebody to try to buy one. And it would be folly for General Motors, or Ford, or Chrysler to try to make one, because the buyer would be left literally high and dry.

I had one of the early diesel cars. I can remember having to drive, I do not know, 5 miles or so to the nearest service station to find someplace with a diesel pump. It was a pain.

Well, somebody who wanted to fill his car up with methanol and ethanol would have no idea where to go. And it would be highly dangerous to get out on the highway and drive any distance at all because the fuel might not be available.

We are not going to succeed in getting to alternative fuel vehicles except through the route of the the flexible fuel vehicles that can burn anything. It cannot happen. There is no conceivable way to create automobiles capable of burning methanol or capable of burning any amount of ethanol unless it is by way of the route of the flexible fuel vehicles.

Congress recognized this in 1988 and then Congress got snookered. What happened when we got snookered is we agreed to an amendment that undid the program. A cap that says, "You get a credit, but, by the way, the credit is only 1.2 miles per gallon" is to say to Detroit, "Forget it. Move your plants overseas. Buy your cars in Japan or in Korea and put your label on them." That is the effect of what we have done.

So, I think that this is a worthwhile amendment.

Now let me ask the Chair if I could make a parliamentary inquiry. I am delighted to talk to Senator BRYAN or anybody else between now and later this afternoon. There are, as I understand it, a number of votes that have been stacked up. I do want, if necessary, if this is not agreed to, to have a rollcall vote. I am reluctant to ask for the yeas and nays at this point because it limits the flexibility.

Do I have as a right the ability to ask for the yeas and nays at the end of the day before we start voting, or do I have to make the unanimous-consent agreement now to make it in order to ask for the yeas and nays?

The PRESIDING OFFICER. The yeas and nays can only be ordered when the amendment is actually pending. If the amendment is in fact pending this evening, then a request for the yeas and nays would be in order at that time.

Mr. DANFORTH. I am not sure I follow that. The amendment is pending now.

The PRESIDING OFFICER. The Senator is correct.

Mr. DANFORTH. As I understand it, we are going to start voting at 7 o'clock on this bill and then we are going to set this bill aside at 5 o'clock. Let us say it appears at, say, 6 o'clock, that it is impossible to work anything out on this amendment. Would it be in order for me at 7 o'clock to ask for the yeas and nays on this amendment?

The PRESIDING OFFICER. Again, it would depend on whether or not the amendment was the pending question at that particular time.

Mr. DANFORTH. Mr. President, I ask unanimous consent that it may be in order for me to ask for the yeas and nays between 7 o'clock and when we actually start voting on the bills or the amendments to the bills.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Barry Zalcman, a congressional fellow in my office, be extended floor privileges during the debate on this matter pending before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I rise today to speak to the opportunity that S. 1224 affords us, the Congress of the United States, in establishing long-term energy policy.

Mr. President, I have been in Congress almost 8 years. During that period, I have spoken numerous times about the need for a long-term energy policy. The conflict in the Persian Gulf has focused the attention of Americans on our existing national energy plan. Mr. President, it is missing in action.

We may very well have a collection of policies related to energy supplies, but surely we can agree that we have no comprehensive national energy plan. For this reason, I commend the President for the administration's recognition and for its effort to launch the search for this missing plan. The Department of Energy has been surveying the land over the last year in search for the national energy strategy but delayed excavating for fear of disturbing the status quo. And that status quo is cheap oil. Now, as this Nation's policy is being set by external forces, we are not reassured that the DOE plan, due out by the end of this year, will be adequate.

Since the 1970's, when we had two oil crises, the United States has taken considerable steps to reduce the threat to its oil supply. We have created and filled the strategic petroleum reserve with nearly 600 million barrels of oil and diversifed our reliance on a limited number of sources of this precious oil. But we could have done much more during the eighties to foster energy self-sufficiency; however, market forces drove us to cheap energy—oil.

The consequences of cheap oil were really profound. In addition to masking a weakening economy, which certainly it did, the conservation forces that dominated the behavior of corporate America and Americans individually after the oil shocks of 1973–74 and 1979–80 were all but forgotten.

Mr. President, I have listened to my colleagues speak here on the Senate floor about their memories of the long lines during the fuel crises of the 1970's. My colleague from Nevada spoke just this morning about the impacts that took place nationwide. Especially hard hit were resort areas like

the State of Nevada on Sunday afternoons, when visitors attempted to return home and were confronted with long lines for a fillup of gasoline.

But, what has happened since then? The yearly use of the automobile has increased by 1,000 miles per year; we're not conserving, we're driving more and more. In 1980, on the average, automobiles were driven approximately 9,100 miles per year. This rose steadily through the eighties, and in 1988, the last year for which we have information, they were driven 10,100 miles per year.

Cheap oil played some part in the relaxing of the CAFE standards between 1986 and 1989. The loss of fuel economy because of this relaxation, just for the 1989 fleet of cars, will total 900 million gallons of fuel.

Apart from the financial loss of fuel burned needlessly, air pollution effects from consuming such fuel and the continuing specter of man's impact on the global environment will still remain.

We all seem to have forgotten the naysayers' forecast of doom and gloom when the first set of CAFE standards were enacted. Mr. President, American technology is incomparable to any other in the world. The bright minds of Americans and their innovative ideas undertook the challenge that faced them and they succeeded in improving fuel economy by over 100 percent. But absent that congressionally mandated goal for fuel economy, the impact to the environment would be far greater than the challenge we face here today.

At this very time, the conference committee on the Clean Air Act amendments of 1990 is considering the strategy to deal with the pollution problem from mobile sources. One of the big areas of contention with the conference is mobile sources. The emissions reductions that resulted from improvements in fuel economy have been outdistanced by the sheer numbers of automobiles on the roads.

Mr. President, with the previous CAFE legislation, fuel efficiency was improved and automobiles consumed less fuel per mile traveled. At the same time, we have put millions of more automobiles on the road, this has meant more pollution, even though fuel economy has improved. If, in fact, the population of automobiles had remained fixed, real progress would have been made on cleaning up the environment. Because the number of automobiles increased so significantly, we lost rather than gained.

The resolution that we will come to on clean air will not be a short-term solution. It will address issues into the next century. The clean air bill that we passed in April was not in reaction to a particular event that captured our attention, but a demonstration, Mr. President, of leadership. The CAFE bill before us now is likewise not in reaction to a particular event that captured our attention; it, too, is a demonstration of leadership. This effort to improve fleet fuel economy, spearheaded by my colleague from Nevada, was not a reaction to the events in the Persian Gulf.

If my colleagues have participated in and followed the debate on clean air, they will recall that CAFE was graciously extracted from the clean air bill in order that it may have at some time in the future its own day in the Sun. I would suggest that its day in the Sun has arrived.

S. 1224 was considered in the Commerce Committee, and it was reported out favorably by a large margin. All parties were given an opportunity to present their views, and my colleagues on the Commerce Committee considered the facts very carefully. We recognize that the administration—and that consists of OMB, the Office of Management and Budget DOT, the Department of Transportation; and DOE; the Department of Energy—is not supportive of this legislation for a variety of reasons. They have argued that it would impact competitiveness and highway safety.

We appreciate the significance of the administration's testimony and statements made by the Office of Technology Assessment, the Environmental Protection Agency, public interest groups, the automobile industry, and the environmental community. The opinions and supporting information were varied and these will contribute to the decision that we make as individuals and collectively as the Senate.

The CAFE bill has broad implications. Roughly 60 percent of all oil consumption is transportation related. For perspective, the Kuwaiti and Iraqi oil production that has been excluded from the marketplace is approximately 4.5 million barrels of oil per day; only a portion of this shortfall would have been destined for United States consumption.

As a direct result of the CAFE improvements between 1973 and 1987, the United States reduced consumption by 1.8 million barrels of oil per day. It is expected that this legislation would further reduce consumption by another 2.8 million barrels per day by the year 2005. I have not heard anything to refute these estimates. These savings would exceed this Nation's entire consumption of oil from the Middle East. So, are we serious about a remedy to extract ourselves from dependence on foreign oil or are we not serious?

Curbing carbon dioxide emissions, which is the primary greenhouse gas, will be a significant contributor to reducing the impending threat of global climate change. We need to recognize that every gallon of gasoline that is burned yields 19.7 pounds of carbon dioxide. It was estimated that the proposed legislation would result in a reduction of CO_2 emissions of 483.5 million tons over the period from 1995 to 2001. Let me repeat that staggering statistic, 483.5 million tons. While these reductions are a fraction of all manmade emissions, it represents a start toward addressing the fundamental threat to man's survival—global climate change.

The subtle positive actions that we can take today to mitigate the impacts and risks associated with global climate change will have cumulative beneficial impacts over the decades that follow.

Mr. President, the leaders of this Nation have shied away from focusing on the threat posed by global climate change. If this threat will cause future generations of Americans to take comparatively dramatic steps by radical changes to their lifestyles, then we should be held accountable for our inaction. We have an opportunity to act decisively or timidly to deal with long-term energy needs and energy use recognizing its impact on the global environment.

For the information of my colleagues, Nevada is the fastest growing State in the Nation. We have transportation and traffic problems that we are trying to resolve. So when I see estimates of potential nationwide savings from this legislation in terms of improving the air pollution picture, energy independence, and savings, I find myself supportive of this legislation. In Nevada, it is estimated that we will conserve nearly one quarter of a billion gallons of fuel per year as a result of this legislation. We can certainly make use of the resources, either in precious fuel or revenue, that would otherwise be burned.

Today we understand the environmental impact of man's activities better than we understood them yesterday. Today we have technology literally by the tail; we are in control. We must come to grips with our actions across the full spectrum of man's activities to ensure that future generations have the opportunity to prosper as we now prosper. Just imagine if our forebears lived only for their generation, without sincere hopes and aspirations for their children's future. We cannot consume and pollute to our heart's desire. We need to act and we need to act responsibility. Certainly, our goal is not to plunder the Earth. It is to use it wisely, to carry on the example set for us, and to ensure that future generations do the same.

Mr. President, the impact of uncontrolled energy consumption and industrialization in the United States during this century has resulted in unhealthful air and water quality and ecological damage that will take a long

time to correct. Some claim that we may have gone too far already; the optimists among us who claim that it can be repaired recognize that it will take considerable expense to repair or mitigate the damage.

So, at this time, we should look at a number of issues that drive us toward sustainable development rather than those that lead us to reliance on the unstable situation in the Persian Gulf.

We need to incorporate conservation, efficiency, renewables, and pollution prevention into our philosophy and lifestyle if we expect to be successful in dealing with the environmental and energy issues that face this and future generations. To disagree with these principles, we will threaten the quality of the air we breathe, the water we drink, the foodstuffs we consume, and the land upon which we live. We can no longer have an insatiable appetite that requires risking the health of Mother Nature.

We do not need an energy crisis to conserve energy. We do not need an energy crisis to use fossil fuels in transportation and the production of electricity more efficiently. We do not need an energy crisis to develop renewable energy technologies, such as solar—which has been put on the back burner—geothermal—Nevada is the leading proponent of geothermal energy—wind energy and biomass. And we do not need an energy crisis to redesign industrial production processes to reduce, and, in some cases, eliminate industrial waste. These can all be achieved with the technical know-how that exists already.

What we need to do is recognize that this plentiful society has afforded us the opportunity to be wasteful like no other time in history. It is our wasteful practices that really are catching up with us, and one of the reasons I am here today. Mr. President, we must act as responsible citizens of the only planet that we have. Let us say that our gluttonous behavior was an abberation.

We can do more than we have done already, and on the issues of climate change and ozone depletion, we need to do more. If we begin addressing the problem sooner, our actions will be less dramatic and have less impact on our lifestyle and, especially, the lifestyle of future generations of Americans. Results of our efforts to enter into multilateral agreements to reduce threats to the ozone layer, which protects mankind from the harmful effects of the Sun's rays, and to changes in climate from man's activities are slow in coming. The results are slow because our Nation's commitment to global environment is low. This is because economic factors have dominated the discussion until today.

So, Mr. President, today and in the days ahead we can, we should, and I hope we will, send a message that is loud and clear, that fuel economy and conservation are achievable goals.

I yield the floor.

Mr. BRYAN. Mr. President, there does not appear to be any Senator who seeks recognition at this time, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call roll.

The bill clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I ask unanimous consent that the pending amendment be set aside for the purpose of introducing a new amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2756

(Purpose: To make certain amendments to the National Traffic and Motor Vehicle Safety Act of 1966 and Motor Vehicle and Cost Savings Act, and for other purposes)

Mr. BRYAN. Mr. President, I ask for the immediate consideration of an amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. BRYAN], for himself and Mr. GORTON, proposes an amendment numbered 2756.

Mr. BRYAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Designate the existing text as title I, redesignate sections 2 through 15 and any reference thereto as sections 101 through 114, respectively, and add at the end the following new title:

TITLE II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AUTHORIZATION

SHORT TITLE

SEC. 201. This title may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1990".

DEFINITIONS

SEC. 202. As used in this title, the term—

(1) "multipurpose passenger vehicle" and "passenger automobile" shall have the meaning given such terms by the Secretary; and

(2) "Secretary" means the Secretary of Transportation.

Subtitle A—Authorization of Appropriations

GENERAL AUTHORIZATIONS

SEC. 221. (a) Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $65,424,000 for fiscal year 1990, and $68,433,000 for fiscal year 1991.".

(b) Section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $336,000 for fiscal year 1990, and $351,000 for fiscal year 1991.".

(c) Section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $2,384,000 for fiscal year 1990, and $2,493,000 for fiscal year 1991.".

(d) Section 417 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990g) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $640,000 for fiscal year 1990, and $669,000 for fiscal year 1991.".

(e) Section 211(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by striking "and" the second time it appears; and

(2) by inserting immediately before the period at the end the following: "not to exceed $5,315,000 for fiscal year 1990, and not to exceed $5,559,000 for fiscal year 1991"."

COMMUNITY EDUCATION PROGRAM

SEC. 222. In order to carry out a national program of community education regarding (1) drunk driving prevention and (2) the use and effectiveness of airbag technology, the Secretary may derive an additional amount not to exceed $10,000,000 from unobligated balances of funds made available for highway safety programs under section 408 of title 23, United States Code. Of the funds allocated to such efforts, not less than one-half shall be used for educational efforts related to airbags. Such amounts shall remain available until expended.

Subtitle B—Side Impact Protection and Crashworthiness Data

SIDE IMPACT PROTECTION

SEC. 241. (a) The Secretary shall, not later than twelve months after the date of enactment of this Act, issue a final rule amending Federal Motor Vehicle Safety Standard 214, published as section 571.214 of title 49, Code of Federal Regulations. The rule shall establish performance criteria for improved protection for occupants of passenger automobiles in side impact accidents.

(b) Not later than sixty days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking to extend the applicability of such standard 214 to multipurpose passenger vehicles. The Secretary shall, not later than two years after such date of enactment, issue a final rule on such extension, taking into account the performance criteria established by the final rule issued in accordance with subsection (a).

AUTOMOBILE CRASHWORTHINESS DATA

SEC. 242. (a)(1) The Secretary shall, within thirty days after the date of enactment of this Act, enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating which will enable consumers to compare meaningfully the crashworthiness of different passenger automobile and multipurpose passenger vehicle makes and models.

(2) Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether additional objective, accurate, and relevant informa-

tion regarding the comparative crashworthiness of different passenger automobile and multipurpose passenger vehicle makes and models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

(A) information on the degree to which different passenger automobile and multipurpose passenger vehicle makes and models will protect occupants across the range of motor vehicle crash types when in use on public roads;

(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection provided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seatbelts, fuel system integrity, and other relevant aspects;

(C) ratings which are accurate, simple in form, readily understandable, and of benefit to consumers in making informed decisions in the purchase of automobiles;

(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger automobile or multipurpose passenger vehicle make or model or very soon after such time of introduction; and

(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

(3) Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than nineteen months after the date of enactment of this Act on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

(4) Within sixty days after transmittal of the report of the National Academy of Sciences to the Secretary and the Congress under paragraph (3) of this subsection, the Secretary shall initiate a period (not longer than ninety days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulagted under title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger automobiles and multipurpose passenger vehicles.

(5) Not later than one hundred and eighty days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine, on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger automobiles and multipurpose passenger vehicles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination, and shall transmit such determination to the Congress.

(b)(1) If the Secretary determines that the system described in subsection (a)(5) of this section can be established, the Secretary shall, subject to the exception provided in paragraph (2) of this subsection, not later than three years after the date of enactment of this Act, promulgate a final rule under section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger automobiles and multipurpose passenger vehicles. The rule promulgated under such section 201 shall be practicable and shall provide to the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger automobiles and multipurpose passenger vehicles so as to contribute meaningfully to informed purchase decisions.

(2) The Secretary shall not promulgate such rule unless (A) a period of sixty calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives a summary of the comments received during the period for public comment specified in subsection (a)(4) of this section, or (B) each such committee before the expiration of such sixty-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.

(c) If the Secretary promulgates a rule under subsection (b) of this section, not later than six months after such promulgation, the Secretary shall be rule establish procedures requiring passenger automobile and multipurpose passenger vehicle dealers to make available to prospective passenger automobile and multipurpose passenger vehicle purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of a passenger automobiles and multipurpose passenger vehicles.

Subtitle C—Miscellaneous Provisions

STANDARDS COMPLIANCE

SEC. 261. Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end the following new subsection:

"(j)(1) The Secretary shall establish a schedule for use in ensuring compliance with each Federal motor ehicles safety standard established under this Act which the Secretary determines is capable of being tested. Such schedule shall ensure that each such standard is the subject of testing and evaluation on a regular, rotating basis.

"(2) The Secretary shall, not later than six months after the date of enactment of this subsection, conduct a review of the method for the collection of data regarding accidents related to Federal motor vehicles safety standards established of collecting data in addition to that information collected as of the date of enactment of this subsection, and shall estimate the costs involved in the collection of such additional data, as well as the benefits to safety likely to be derived from such collection. If the Secretary determines that such benefits outweight the costs of such collection, the Secretary shall collect such additional data and utilize it in determining which motor vehicles should be subject of testing for compliance with Federal motor vehicles safety standards established under this Act.".

INVESTIGATION AND PENALTY PROCEDURES

SEC. 262. (a) Section 112(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(a)(1)) is amended by adding at the end the following: "The Secretary shall establish written guidelines and procedures for conducting any inspection or investigation regarding noncompliance with this title or any rules, regulations, or orders issued under this title. Such guidelines and procedures shall indicate timetables for processing of such inspections and investigations to ensure that such processing occurs in an expeditious and thorough manner. In addition, the Secretary shall develop criteria and procedures for use in determining when the results of such an investigation should be considered by the Secretary to be the subject of a civil penalty under section 109 of this title. Nothing in this paragraph shall be construed to limit the ability of the Secretary to exceed any time limitation specified in such timetables where the Secretary determines that additional time is necessary for the processing of any such inspection or investigation.".

(b) Section 109(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398(a)) is amended by adding at the end thereof the following: "The Secretary shall establish procedures for determining the manner in which, and the time within which, a determination should be made regarding whether a civil penalty should be imposed under this section. Nothing in this subsection shall be construed to limit the ability of the Secretary to exceed any time limitation specified for making any such determination where the Secretary determines that additional time is necessary for making a determination regarding whether a civil penalty should be imposed under this section.".

TRAFFIC SAFETY FOR HANDICAPPED INDIVIDUALS

SEC. 263. (a) The Congress finds that—

(1) a number of States fail to recognize the symbols of other States for the identification of motor vehicles transporting individuals with handicaps that limit or impair the ability to walk; and

(2) the failure to recognize such symbols increases the likelihood that such individuals will be involved in traffic accident incidents resulting in injury or death, posing a threat to the safety of such individuals as well as the safety of the operators of motor vehicles and others.

(b)(1) After the date that is eighteen months following the date of enactment of this Act, the Secretary shall require that each State provide for the implementation of a uniform system for handicapped parking designed to enhance the safety of handicapped and nonhandicapped individuals. If a State fails to meet such requirement, the funds that would otherwise be apportioned to the State under section 402 of title 23, United States Code, shall be reduced by 2 percent, until such time as the Secretary determines that the requirement is being met.

(2) For purposes of this subsection, a uniform system for handicapped parking designed to enhance the safety of handicapped and nonhandicapped individuals is a system which—

(A) adopts the International Symbol of Access (as adopted by Rehabilitation International in 1969 at its 11th world Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting indi-

viduals with handicaps which limit or impair the ability to walk;

(B) provides for the issuance of license plates displaying the International Symbol of Access for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(C) provides for the issuance of removable windshield placards (displaying the International Symbol of Access) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(D) provides that fees charged for the licensing or registration of a vehicle used to transport such individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State; and

(E) for purposes of easy access parking, recognizes licenses and placards displaying the International Symbol of Access which have been issued by other states and countries.

(c) Beginning not later than twenty-four months after the date of enactment of this Act, the Secretary shall annually evaluate compliance by the States with the requirement established by the Secretary under subsection (b). The Secretary shall submit to Congress an annual report regarding such evaluation.

MULTIPURPOSE PASSENGER VEHICLE SAFETY

SEC. 264. (a) The Congress finds that—

(1) multipurpose passenger vehicles have become increasingly popular during this decade and are being used increasingly for the transportation of passengers, not property; and

(2) the safety of passengers in multipurpose passenger vehicles has been compromised by the failure to apply to them the Federal motor vehicle safety standards applicable to passenger automobiles.

(b) In addition to the rulemaking requirements applicable to multipurpose passenger vehicles under other provisions of this title, the Secretary shall initiate (not later than sixty days after the date of enactment of this Act) and complete (not later than twelve months after such date of enactment) a rulemaking to revise, where appropriate, in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms—

(1) Federal Motor Vehicle Safety Standard 216, published as section 571.216 of title 49, Code of Federal Regulations, to provide minimum roof crush resistance standards for multipurpose passenger vehicles;

(2) Federal Motor Vehicle Safety Standard 108, published as section 571.108 of title 49, Code of Federal Regulations, to provide for a single, high-mounted stoplamp on multipurpose passenger vehicles; and

(3) Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations, to extend the requirements of outboard front seat passive restraint occupant protection systems to multipurpose passenger vehicles.

(c) In accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Secretary shall, not later than twelve months after the date of enactment of this Act, complete a rulemaking—

(1) to review the system of classification of vehicles with a gross vehicle weight under ten thousand pounds to determine if such vehicles should be reclassified;

(2) to revise Federal Motor Vehicle Safety Standard 202, published as section 571.202 of title 49, Code of Federal Regulations, to provide for head restraints for multipurpose passenger vehicles; and

(3) to consider establishment of a Federal Motor Vehicle Safety Standard to protect against unreasonable risk of rollover of multipurpose passenger vehicles.

Any reclassification pursuant to paragraph (1) shall, to the maximum extent practicable, classify as a passenger automobile every motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor car or other motor vehicle principally designed for the transport of persons under heading 8703 of the Harmonized Tariff Schedule of the United States. Nothing in this section shall prevent the Secretary from classifying as a passenger automobile any motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor vehicle for the transport of goods under heading 8704 of such Harmonized Tariff Schedule.

REAR SEATBELTS

SEC. 265. (a) In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall complete, within twelve months after the date of enactment of this Act, a rulemaking to amend Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations, to provide that the outboard rear seat passengers of all passenger automobiles, except convertibles, manufactured on or after September 1, 1989, shall have lap and shoulder seatbelt protection, and that the outboard rear seat passengers of all multipupose passenger vehicles and all convertible passenger automobiles manufactured on or after September 1, 1991, shall have lap and shoulder seatbelt protection.

(b) Notwithstanding any other provision of law, not less than 10 percent of the funds authorized to be appropriated under section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) in fiscal years 1990 and 1991 shall be utilized to disseminate information to consumers regarding the manner in which passenger automobiles may be retrofitted with lap and shoulder rear seatbelts.

CERTIFICATION OF BUMPERS

SEC. 266. The motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by inserting after section 102 the following new subsection:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A. (a) The Secretary shall promulgate, in accordance with the provisions of this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than one hundred and eighty days after the date such regulation is promulgated, as provided in subsection (c)(2) of this section.

"(b)(1) The regulation required to be promulgated in subsection (a) of this section shall provide that, before any passenger motor vehicle is offered for sale, the manufacturer shall affix a label to such vehicle, in a format prescribed in such regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria.

"(2) For purposes of this subsection, the term 'applicable damage criteria' means the damage critieria applicable under section 581.5(c) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this section).

"(c)(1) Not later than ninety days after the date of enactment of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than one hundred and eighty days after such date of enactment, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) of this section by permitting such manufacturer to make the bumper system impact speed disclosure required in subsection (b) of this section on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation promulgated under subsection (a) of this section shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving such information, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

CHILD BOOSTER SEATS

SEC. 267. (a) In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall conduct a rulemaking to amend Federal Motor Vehicle Safety Standard 213, published as section 571.213 of title 49, Code of Federal Regulations, to increase the safety of child booster seats used in passenger automobiles. The rulemaking shall be initiated not later than thirty days after the date of enactment of this Act and completed not later than twelve months after such date of enactment.

(b) As used in this section, the term "child booster seat" has the meaning given the term "booster seat" in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

AIRBAG REQUIREMENT FOR FEDERAL PASSENGER VEHICLES

SEC. 268. The Secretary, in cooperation with the Administrator of General Services and the heads of other appropriate Federal agencies, shall establish a program requiring that all passenger automobiles acquired after September 30, 1990, for use by the Federal Government be equipped, to the maximum extent practicable, with driver-side airbags and that all passenger automobiles acquired after September 30, 1993, for

use by the Federal Government be equipped, to the maximum extent practicable, with airbags for both the driver and front seat outboard seating positions.

STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

SEC. 269. Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended by adding at the end the following new section:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Secretary shall, within thirty days after the date of enactment of this section, enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the effectiveness of State motor vehicle safety inspection programs in—

"(1) reducing motor vehicle accidents that result in injuries and deaths; and

"(2) limiting the number of defective or unsafe motor vehicles on the highways.

"(b)(1) The study shall include an evaluation of the implementation, inspection criteria, personnel, budgeting, and enforcement of all types of State motor vehicle inspection programs or periodic motor vehicle inspection programs, including inspections of motor vehicle brakes, glass, steering suspension, and tires.

"(2) If warranted by the study, the National Academy of Sciences shall develop and submit to the Congress recommendations for an effective and efficient State motor vehicle safety inspection program.

"(c) The study shall also consider the feasibility of use by States or private organizations to conduct motor vehicle safety inspection programs and of combining safety and emission inspection programs.

"(d) Appropriate public and private agencies and organizations, including the Secretary, the Administrator of the Environmental Protection Agency, affected industries and consumer organizations, State and local officials, and the motor vehicle insurance industry should be consulted in conducting the study required under this section.

"(e) The study required by subsection (a) shall be completed and transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives within nineteen months after the date of enactment of this section.".

RECALL OF CERTAIN MOTOR VEHICLES

SEC. 270. (a) Section 153 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413) is amended by adding at the end the following new subsections:

"(d) If the Secretary determines that a notification sent by a manufacturer pursuant to subsection (c) of this section has not resulted in an adequate number of vehicles or items or equipment being returned for remedy, the Secretary such manner as the Secretary may by regulation prescribe.

"(e)(1) Any lessor who receives a notification required by section 151 or 152 pertaining to any leased motor vehicle shall send a copy of such notice to the lessee in such manner as the Secretary may be regulation prescribe.

"(2) For purposes of this subsection, the term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelves months preceding the date of the notification.".

(b) Section 154 of the National Traffic and Motor Vehicles Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal Motor Vehicle Safety Standard or contains a defect which relates to motor vehicle safety, such dealer may sell or lease such motor vehicle or item of replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease; or.

"(2) in the case of notification required by an order under section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicles or item of equipment.".

STUDY OF DARKENED WINDOWS

SEC. 271. The Administrator of the National Highway Traffic Safety Administration shall conduct a study of the use of darkened windshields and window glass in passenger automobiles. In particular, the study shall consider the effects of such use on the safe operation of passenger automobiles, as well as on the hazards from such use to the safety of law enforcement personnel. In conducting such study, the Administrator shall consult with appropriate industry representatives, officials of law enforcement departments and agencies, and consumer representatives. The Administrator shall submit the results of such study to the Committees on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than six months after the date of enactment of this Act.

PETITIONS REGARDING CORPORATE AVERAGE FUEL ECONOMY STANDARDS

SEC. 272. Section 502(d)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(d)(1)) is amended by striking "1980. Such application" and inserting in lieu thereof the following: "1980, or for any model year after model year 1991. Any application seeking such modification".

JUDICIAL REVIEW OF ACTIONS ON CERTAIN PETITIONS

SEC. 273. Section 124(d) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1410a(d)) is amended by adding at the end the following: "The denial of such petition is final agency action subject to judicial review as provided in section 706 of title 5, United States Code.".

BUMPER STANDARD

SEC. 274. (a) Not later than one year after the date of enactment of this Act, the Secretary shall amend the bumper standard published as part 581 of title 49, Code of Federal Regulations, to ensure that such standard is identical to the bumper standard under such part 581 which was in effect on January 1, 1982. The amended standard shall apply to all passenger automobiles manufactured after September 1, 1990.

(b) Nothing in this section shall be construed to prohibit the Secretary from requiring under such part 581 that passenger automobile bumpers be capable of resisting impact speeds higher than those specified in the bumper standard in effect under such part 581 on January 1, 1982.

GRANT PROGRAM CONCERNING USE OF SEATBELTS AND CHILD RESTRAINT SYSTEMS

SEC. 275. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 411. Seatbelt and child restraint programs

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement seatbelt and child restraint programs which include measures described in this section to foster the increased use of seatbelts and the correct use of child restraint systems. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for seatbelt and child restraint programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payble for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the seatbelt and child restraint program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Subject to subsection (c), the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall equal 20 percent of the amount approportioned to such State for fiscal year 1990 under section 402.

"(e) A State is eligible for a grant under this section if such State—

"(1) has in force and effect a law requiring all front seat occupants of a passenger automobile to use seatbelts;

"(2) has achieved—

"(A) in the year immediately preceding a first-year grant, the lesser of either (i) 70 percent seatbelt use by all front seat occupants of passenger automobiles in the State or (ii) a rate of seatbelt use by all such occupants that is 20 percentage points higher than the rate achieved in 1989;

"(B) in the year immediately preceding a second-year grant, the lesser of either (i) 80 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 35 percentage points higher than the rate achieved in 1989; and

"(C) in the year immediately preceding a third-year grant, the lesser of either (i) 90 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 45 pecentage points higher than the rate achieved in 1989; and

"(3) has in force and effect an effective program, as determined by the Secretary, for encouraging the correct use of child restraint systems.

"(f) As used in this section, the term 'child restraint system' has the meaning given such term in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $10,000,000 for the fiscal year 1990, and $20,000,000 for each of the fiscal years 1991 and 1992.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"411. Seatbelt and child restraint programs.".

METHODS OF REDUCING HEAD INJURIES

SEC. 276. The Secretary shall initiate (not later than sixty days after the date of enactment of this Act) and complete (not later than two years after such date of enactment) a rulemaking to revise, in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal Motor Vehicle Safety Standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Federal Motor Vehicle Safety Standards. Such rulemaking shall consider methods of reducing head injuries in passenger automobiles and multipurpose passenger vehicles from contact with vehicle interior components, including those in the head impact area as defined in section 571.3(b) of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

PEDESTRIAN SAFETY

SEC. 277. The Secretary shall initiate (not later than six months after the date of enactment of this Act) and complete (not later than two years after such date of enactment) a rulemaking to consider the establishment of a standard to minimize pedestrian death and injury, including injury to the head, thorax, and legs, attributable to vehicle components. Any such standard shall be established in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

Mr. BRYAN. Mr. President, may I inquire if the amendment reflects the cosponsorship of the Senator from Nevada, as well as the Senator from Washington [Mr. GORTON]?

The PRESIDING OFFICER. It does.

Mr. BRYAN. Mr. President, there has been a lot of discussion about safety, and that is certainly a proper area to be concerned about. I can represent to my colleagues that, having worked with the distinguished ranking member of the subcommittee that processed the underlying amendment we are talking about today, the CAFE legislation, safety was a concern that as uppermost in our minds, as well.

It is something that he and I early on last year attempted to get the National Traffic Safety Administration reauthorization through this body and hopefully through the other body and if successful would make the first time in some 8 years, since 1982, as I recall, that there was indeed a reauthorization.

I must say, Mr. President, there has been much that has been said by NHTSA, and by the Secretary of Transportation about safety, but the single most important thing that we can do is to pass S. 673 which cleared this body by unanimous consent many months back. I would like to spend a few moments if I may to discuss with you and with my colleagues what S. 673 accomplishes.

Among other things it establishes and requires the establishment of side impact standards. I must say, Mr. President, that as one who was relatively new to the body I find it absolutely astounding that after all of the years and by common agreement a side impact standard would enhance safety. We are not talking now about looking forward to a major breakthrough in technology. We are talking about a side impact standard. That is to protect the interior of the vehicle from dramatic impact on either side and thus be able to enhance the protection of the occupants of the vehicle. That is still now, 9 years after the original discussion, not yet a reality.

S. 673 would require that information and that standard.

Consumer information on crashworthiness requires the agency to develop to the extent possible and to make available to consumers data to permit comparison of the crashworthiness of the different vehicles and ability of bumpers to withstand impact. This in my view is the essence of informed consumer choice, to provide the information in a responsible and comparative way, so that the individual in the marketplace, the customer, if you will, makes the decision depending upon what weight he or she may wish to attach to the crashworthiness evaluation.

This amendment also would require handicapped parking to be the subject of a uniformed national procedure for safe parking. It requires with respect to multipurpose vehicles a certain limited time for rulemaking to establish the side impact standard to which I made reference and to consider prevention of an unreasonable risk of rollover. It requires rulemaking on the following safety standards for multipurpose vehicles. The front seat passive restraints, head restraints, the high mounted stoplights, and roof crush resistance.

Mr. President, rear seatbelts are also under the language of this proposed amendment to be required. There is a provision for rulemaking to ensure the safety of child booster seats which was the subject of another hearing that the Consumer Subcommittee had earlier in the year and it does require that airbags in all Federal fleet passenger care if economically feasible be required and it returns to a bumper standard rescinded by the previous administration in 1982 in that bumpers must prevent damage to the safety features of the car and incur limited damage in crashes of up to 5 miles per hour. And finally it grants programs to encourage seatbelt use and child restraints to the various States.

And it requires a rulemaking to consider means of preventing head injury caused by contact with interior components of the vehicle.

Returning once again to the issue of pedestrian safety, it requires rulemaking to consider ways of preventing pedestrian injuries caused by contact with the vehicle exterior.

Mr. President, as I indicated at the outset there has been a lot of talk about safety and I think rightfully so. We all ought to be concerned about safety. But I must say that it strikes me as a bit incongruous that indeed the NHTSA Administrator and the Secretary of Transportation who both held press conferences last week decrying the effect of the CAFE standards which are proposed in S. 1224 and took the occasion to be highly critical of it have yet to take the same kind of forceful and aggressive conduct that would help us get S. 673 through the other body.

I offer this as an amendment to the underlying bill so that no one will be misled that those of us who have worked for the past year and some months on the CAFE legislation are not equally concerned about the safety issue as well.

This piece of legislation was opposed by the industry, as one may well presume. That is why it has languished for a period that approaches a year now in the other body. It was opposed by the administration and no action has been forthcoming.

For those who have a primary focus on safety, let me just indicate to my colleagues what this legislation, this particular amendment, could do. It has been estimated that the airbag requirement would save 12,000 lives a year.

Mr. President, I note within the past few months incidents that have been reported in the Washington Post. There was a head-on collision between two automobiles. The first, insofar as we know, in recorded history in which two automobiles that were engaged in a head-on collision—and which the highway patrolman was quoted as saying that he expected to be making out fatality reports—that both of the occupants, both drivers, if you will, one in one vehicle, one in the other,

survived. They were, in effect, exiting the vehicle at the time that he came over to the place where the two vehicles were at rest after the accident.

I notice that this morning's Washington Post, in the Metro section, talks about an accident in which one of the individuals involved in the accident credits his survival with airbags.

So we know that airbags work. We know that airbags save lives. We know that airbags make vehicles safer—12,000 lives a year might be saved. I think the record should be amplified to the extent that it should reflect that the industry has resisted this for the past 20 years and ultimately litigated the issue before the U.S. Supreme Court.

Now, the original passive restraint rule was adopted back in 1977, 13 years ago, to be effected in 1983. The rule was rescinded in 1981. It was not reinstated until 1984 and there has been a continual foot dragging since that period of time.

Now I would also say with respect to light truck and van safety that a GAO report in 1978 found unwarranted delays by the Department of Transportation to improve light truck safety. By 1990, as we speak, NHTSA has still not adopted the side impact standard, a passive restraint standard, a rollover protection standard, or roof crush standard for light trucks, and, instead, to repeat, has opposed this legislation. The industry has consistently opposed rulemaking.

So I would have to say that at least those who profess an interest in safety, an overriding concern, when CAFE is being debated have a credibility gap, I would respectfully suggest, insofar as there is an opportunity to do something that, agreed by all, would improve the quality of safety in the vehicles that travel along our roads and highways and yet they have consistently resisted this kind of legislation.

Now there was a GAO report, Mr. President, in January of 1989 that noted that these rulemakings with respect to shoulder belts, impact protection, and head restraint standards had been pending for some 21 to 27 months without completion; again, indicating in my view, a lack of urgency or a sense of responsibility that indeed we need to move forward.

The NHTSA report of May 1990 found that increased risk of rollover is responsible for 66 percent of deaths in jeeps and 24 percent of deaths in other passenger cars. Now that is their own report and yet the agency took no action on its own on this issue and denied a petition for rulemaking in early 1988 and then belatedly granted a petition for rulemaking in September 1988. That was 2 years ago. No rule has been issued, as we are debating this legislation this afternoon.

Again, NHTSA has opposed S. 673 which incorporates such a requirement.

It is estimated that improved vehicle design to minimize injury to pedestrians hit by cars would save 1,000 to 2,000 lives a year. S. 673 requires rulemaking on vehicle design to prevent predestrian injury.

So I would say to my colleagues that insofar as safety is an issue, as it ought to be, there is a clear and consistent avenue for us all to pursue, and that is to urge our colleagues in the other body to be supportive of S. 673 and to adopt the amendment which has just offered by this member a moment ago which incorporates the provisions of S. 673 which cleared this body by unanimous consent some time back.

Mr. President, I note that there may be other Members seeking recognition at this point.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BOND. Mr. President, the Senate is currently debating a very important bill, S. 1224, which would require an increase in the corporate average fuel economy standards for automobiles.

As important as this issue is, I believe that the broader issue of our national energy policy is even more crucial. We all realize that there is no single solution to the problem of reducing our dependency on foreign oil. There is no neat, simple solution that we all wish there were. We understand that we will have to utilize several approaches to solve the problem.

For example, we must provide incentives to speed the development of alternative fuels like ethanol. Extending the current 6-cent exemption from the Federal gasoline tax for ethanol wuld be a good way to start. Other alternative fuels also should be developed, and I know that work is ongoing in those areas.

We must also have an energy policy which encourages increased conservation, provides incentives for increased domestic production, and promotes mass transportation and car pooling, to name just a few proposals.

California is considering an idea that has appealed to me. It would pay people to turn in their old gas guzzlers in order to get those gas guzzlers, those polluters, those wasters of fuel, off the road. I think this is perhaps a fast and practical ways to get people into higher mileage cars.

This winter, when Congress evaluates the Department of Energy's energy policy recommendations, we must ensure that they include incentive for developing additional energy sources in the United States. We have failed to move forward in producing energy from some sources because of environmental and safety concerns. I hold those concerns to be of the highest magnitude and greatest importance. I would expect, however, that development of new technology and the development of better resource management practices could help us maintain our commitment to the environment and to safety as we develop energy sources that are here in the United States.

And I certainly support making cars more fuel efficient. In fact, as recent events in the Middle East have reminded us, we really do not have much choice. We used to be conscious of fuel economy and conserving gasoline, but our memories of the earlier oil shortages have faded, and we have forgotten the lessons we learned so painfully a decade ago.

But while I support the goals of this legislation, I do not support the deadlines for achieving them. Under S. 1224, automakers must make a 20-percent improvement in fuel economy standards for passenger cars by 1995 and achieve a 40-percent increase by 2001. As much as we want to see these improvements, I think that we will suffer by demanding too much too soon. Let me explain.

There are several problems with S. 1224 which have not been addressed to my satisfaction. First, it is not clear to me how these large increases will be made, given that we do not yet have an advanced engine technology which would achieve them. While the bill's proponents assert that there are some smaller technical adjustments that can be made which will improve fuel economy by several miles per gallon, there is currently no magic, new technology which can be pulled off the shelf and used to meet the bill's stringent requirements.

Supporters of the legislation also claim that mileage can be improved by reducing vehicle weight. Auto makers have already reduced the weight of their cars by over 500 pounds since Congress passed the first CAFE bill in 1975. Weight reduction has, in fact, been one of the major tools that companies have used to meet these previous requirements. There has been some compromise in the safety of cars as a result of this downsizing, but it has generally been minimal.

Now, however, we are at a crossroads with regard to auto safety. Mr. President, one does not have to be a rocket scientist to know that smaller, lighter, and narrower cars are not as safe in a crash as larger, heavier, and wider ones. If we reduce vehicle weight much further, I believe we could be placing lives at risk, a conclusion supported by several studies of the Department of Transportation.

Mr. President, one of the basic principles of our economic system has been consumer choice. Companies offer consumers as many choices and as many products as possible, and consumers tell companies what they think

of these products every day through the products they buy.

Consumers have been telling auto makers for years that they do not buy cars only on the basis of fuel economy. In fact, only 3 percent of all cars sold each year are the very high-mileage models like the Geo. Consumers want good mileage, but they also want interior space, good performance, and safety. Safety measures are vitally important.

So, one of my other major concerns about this bill is that it will limit consumer choice. This is because the auto companies will not be able to meet the proposed deadlines for any of their vehicles except for the very small ones, so they will stop making large and even medium-size cars in order to get their nationwide average up.

I submit to my colleagues that a more honest approach, but one I do not advocate at this point, and I do not believe this body is ready to enact, is to set a deadline and to allow only the production of fuel-efficient cars and to ban the production of anything but these vehicles on the roads and highways of this country. Perhaps even a higher excise tax on cars with fuel consumption below certain minimums would be an approach we should consider.

But I cannot guarantee that the majority of American people would agree with this approach. They want to exercise their choice when they purchase cars. They want to conserve fuel, but they have other equally important concerns. I think they would object long and hard if we tell them what kind of cars they can buy.

Mr. President, I believe that the auto companies have a very real obligation to improve on the current CAFE standards. We cannot let them off the hook. The goal of reducing our dependency on imported oil is too important. I strongly urge them, and I'm sure my colleagues would join me, to expedite their research and development so that we have the next generation of engine technology as soon as possible.

But as the Senator from the third largest auto producing State in the country, I cannot support the bill in its current form. I cannot endorse a measure which would throw many Missourians out of work, perhaps reduce significantly auto safety, and which would work against consumer choice.

I could support a measure which set reasonable deadlines and goals matched with our current technology, and which did not compromise safety. I have yet to see that legislation, and I cannot support the bill in its present form.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first I want to say that I join my distinguished colleague from Nevada not only in sponsoring but in speaking for the amendment which he proposed not long ago to add to this bill, an amendment which would reinforce the support of this body for the reauthorization of the National Highway Traffic Safety Administration.

As the Senator from Nevada pointed out during the course of his remarks, that proposal has already passed the Senate by a voice vote. It has not so much as been granted a hearing, however, in the House of Representatives.

Since so many of the Members who have expressed concern with S. 1224 have spoken to issues of safety, however, it seems to me appropriate that the Senate once again emphasize its strong support for safety and for the kind of measures which effectively can only be carried out through the efforts of the National Highway Traffic Safety Administration.

This amendment is a good and important one and deserves the support of all Members of the Senate, both those who are in favor of the bill, which the Senator from Nevada and I have sponsored, and those who are not in favor of it.

The Senator from Missouri, who was just here, however, has made a number of remarks which lead me to reflect on the proposition that once the Senator from Nevada made his opening statement this morning, we have been debating details and not the entire thrust of this bill and the reasons that it is so important.

This bill, S. 1224, is important because a tremendous national success in increasing the fuel economy of our automobiles, triggered by legislation arising out of the Arab oil boycott and one of the last rapid runups in the cost of fuel for automobiles and, the greatly increasing consciousness of the weaknesses imposed on the United States of America by dependence on foreign oil, caused a policy decision in the mid-1970's which has been a remarkable success.

(Mr. DECONCINI assumed the chair.)

Mr. GORTON. Mr. President, the average fuel economy of automobiles manufactured and sold in the United States more than doubled as a result of that legislation. It more than doubled in a relatively short period of time, a period of time perhaps not so long as a single decade. It has made us infinitely stronger than would otherwise have been the case had that bill not been passed. It makes what is now a serious challenge to the United States with respect to unrest in the Middle East just that, a serious challenge, and not the unmitigated disaster with which we were faced a decade and a half ago.

It is, therefore, appropriate to consider whether or not a proposal which was so great a success in the late seventies and early eighties cannot be replicated now. In spite of that success, we are more dependent on foreign sources for our petroleum products than ever before.

The Senator from Nevada and I, and I believe a majority of the other Members of this body, believe it is time to move forward and to ask for an increase in fuel economy in automobiles which is modest by comparison with that requested by Congress in 1975. The result of that action was a doubling of fuel economy. This bill asks for an increase of 20 percent in the average fuel economy of each of the manufacturers' fleets by 1995 and 40 percent by early in the 21st century.

We constantly, on the other hand, Mr. President, are met with the argument that while it is desirable to increase fuel economy, we should not act on this bill or this philosophy now because the only way in which these goals could be reached would be by sharply downsizing automobiles and threatening the safety of the American driver.

Mr. President, that simply is not a valid argument. The distinguished Senator from Nevada has prepared a notebook from a multiplicity of sources on both our history and on our future. At least half a dozen organizations dealing with energy-related challenges—some private, some a part of this administration—have pointed out that the goals which we seek are eminently attainable. For the benefit of my colleagues who will have to vote on cloture tomorrow, I want to go through simply one page.

Without changes in the size of our automobiles, the following steps can be adopted based on presently available production technologies which will more than meet the 1995 intermediate goals set out by this bill. I will list them and the percent of fleet fuel efficiency gained which each one of them would produce.

Front-wheel drive, 2.4 percent; 4-valve per cylinder in 4- and 6-cylinder engines, 6 percent; intake valve control, 1.6 percent; 4-speed automatic transmission, 3 percent; electronic transmission control, 1.3 percent; reduced drag, 3.4 percent; additional drag reduction, 2.7 percent; tire changes, one-half of 1 percent; lubricants, one-half of 1 percent; accessories, 1 percent; and engine improvements, including roller cams, low-friction rings and pistons, throttled body fuel injection, multipoint fuel injection, and overhead cam, a total of 5.8 percent. That is an increase of 29.4 percent, Mr. President, half again as much as the requirements which this bill imposes. None of those requirements require downsizing. None of

them is a threat to safety. In fact, if anything, they are almost certain to contribute to the safety of our automobiles.

The Senator from Missouri is, regrettably, typical of many of those who oppose this bill in giving lip service to the proposition that we must reduce our dependence on foreign sources for oil and for petroleum but not now, not this way, not in this form, but in some other way or at some other time, which he does not define. He states, quite correctly, that our automobile manufacturers have an obligation to improve fuel economy, but during the course of the last several years they not only have not improved fuel economy; fuel economy is going down by reason of the production of a greater share of larger, very high-horsepower, very high-speed, so-called muscle cars.

On the other hand, I believe that the Senator from Missouri is entirely correct when he says that few American consumers buy cars primarily for fuel economy reasons. His percentage, which is probably accurate, is on the order of 3 percent. That is the case, of course, Mr. President, because we have essentially the lowest prices for automobile fuel, for gasoline, of any major industrialized nation in the world.

Already, with a 25- or 30-percent increase in gasoline prices during the course of the last 2 or 3 months, we are seeing what we saw in the seventies, emphasis in commercials for automobiles on fuel economy. But it is engaging in this process backward, to wait until we are forced into fuel price increases by the action of oil companies or by the action of rulers in the Middle East or in other parts of the world. We should be ahead of the wave in this connection. We should have created our own technology to reduce our dependence on foreign energy and not simply to do it as a reaction to increased prices forced on us from overseas.

The Senator from Missouri went on to say that the American people are concerned with size, many of them are interested in performance, some of them are interested in safety, although I may point out that when the automobile companies come to testify on bills like the reauthorization of the National Highway Traffic Safety Administration they constantly argue against mandatory safety devices on the ground that consumers do not really choose them or would not choose them freely.

That is not at all surprising. Every one of us, I suspect, considers himself or herself to be an above-average driver, perhaps to be an excellent driver. We do not think that we are going to be involved in automobile accidents. We feel that we have the skills to avoid them. I suspect one would find that true even with people who have just been in accidents; they have felt they were above-average drivers. We do not get major increases in safety-related items without being required through society, through requirements of the Congress or an administration created by Congress, and, bluntly, we would not have gotten the increases in fuel economy which we have had over the last decade and a half without mandating it in the way the CAFE standards bill did in 1975.

If we are serious about the proposition that we should reduce our dependence on foreign oil, if we are serious about the proposition that we wish to increase the quality of our air, if we are serious about the proposition that we should have more fuel-efficient vehicles, Mr. President, we are going to gain that goal only by this bill or a bill which is similar to it.

It is perfectly appropriate to hold proposition, I think, that perhaps we should do it a little bit differently. In fact, we have or we are about to accept amendments to this bill which will change it in some minor respects. But the goal of increased efficiency, the goal of less dependence on foreign oil goals which all of us share, are, in fact, going to be attained only if we pass this bill or we pass a bill like it.

Will the impact of the failure of this bill, of its actual failure to get a majority of the votes in this Senate, the failure of cloture tomorrow, will that encourage automobile companies to live up to the obligation which the distinguished Senator from Missouri said they had, to produce more efficient engines in automobilies? Mr. President, I submit to you that they will not.

They have used against this bill exactly the arguments that they used—spectacular, unacceptable and spectacularly—wrongly in 1974 and 1975. If we listen to those arguments, if we listen to those arguments which were wrong before and wrong today, the message which we will send to the automobile companies is that not only do the people of the United States not care, the Congress of the United States does not care, that they can go on their merry way doing what they have done since they reached requirements the present CAFE standards legislation imposes, because they will do nothing more in this direction until they are forced to do it by a conscious decision in this American society, or until they are forced to do it by an economy so bad and so subject to the blackmail of foreign countries that the price of gasoline will not only remain where it is today, but go up by another 25 or 50 or 100 percent.

It is far better to control our own fate than to have that fate imposed upon us by others outside the United States, far better to deal with this problem today in a straightforward and first-rate fashion than to come back to it 1 year or 2 years or 3 years from now having lost all the intervening time, and having lost billions of dollars in treasure and in our psychological independence. Because, Mr. President, while neither the Senator from Nevada nor I can speak with overwhelming confidence for the proposition that this bill will become law before this calendar year is over, both of us though, I know, join in stating with great confidence that this bill is in America's future. Since it is in America's future, better sooner than later. We need it now.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. I know there are some other amendments that may be coming to the floor here, and if so, I will extend such time as anyone who has such an amendment to offer, to make such comments.

I see my colleague from Montana has come in. I do not know whether he has an amendment to offer or not. But in any event, I want to respond to a few of the points that were made here.

I want to make it clear, as I have at other points in the debate, that I think early next year in the context of looking at the development of a comprehensive national energy strategy that every issue, every way to save energy, should be put on the table, including CAFE. I think in the context of an overall assessment and effort to streamline and have a comprehensive national energy policy—that area has to be part of what we look at.

Everyone will not agree with that. But I argue that is the case.

That is not the same thing as saying now that we should, even as we stand today, have an energy policy based on just that attempt. That is what this amendment would do—attempt, to try to make it seem as if we are somehow in a material way, gettting at the energy problem by just this piece of legislation that has been offered.

I mentioned earlier that the stock market today had a tough day. They are off about 58 points. They are revising the Dow Jones industrial numbers. But that would be a 52-week closing low on the stock market.

I know my colleage from Michigan is on the floor. I know he has an amendment he wants to offer, and I know of two colleagues wanting to speak on a pending amendment, I am told the Danforth amendment. So I will not talk at length. I will just speak briefly now.

But I think the stress we are seeing in the financial markets—I talked earlier about the great pressure that our companies are under, the automobile industry, and elsewhere—in terms of raising capital—we are finding it very difficult. Interest rates were up again today. There are signs that the Japa-

nese are raising their interest rates and are cutting down on the flow of capital to the United States which we to a great extent have been depending upon.

We cannot lose sight of the fact that this amendment imposes a new $62.5 billion cost on the automobile industry in order to meet the technical requirements in this bill, assuming that they can be met. Most of the experts do not think they can be, and argue strongly to the contrary. But even to try is going to cost that kind of money, and it certainly is not there. We do not have that kind of money to spend.

On the safety issue, I know my colleague will be addressing that, but it is clear as a bell from the insurance industry, from the Department of Transportation itself, the Department of Highway and Safety Administration, that if we go down this track by imposing these kinds of very sharp increases in mileage requirements, it means smaller cars, it means less safe cars. There is just no way around that. That is a direct and known tradeoff. The data is there for us to see.

The last point I would like to make at this time is this: It is important for people to realize, to think there is somehow magic technology out there to reach for. I pointed out that gasoline prices per gallon in other countries, Japan and parts of Europe, are as much as $3 and $4 a gallon. If there was a technology that could get this much higher fuel efficiency out of cars, the private sector, American producers and foreign producers, would be building those cars and selling them to those markets where a vast amount of money could be made because so much more money could be saved with gas at that higher price per gallon. If there were a technological way to do this, it would be done. We would see that happen.

The fact is that the mile-per-gallon averages in Europe and Japan are only slightly above what we have here. So the notion that somehow or another there is a technological windfall out there, if we went the $62.5 billion, if we could find it, not worry about the tradeoff on safety, reduction in car size, not worry about the increased emissions going up into the atmosphere because of the tradeoffs in that area, we are fooling ourselves.

So this amendment sounds great but there is tremendous difficulty associated with it. It is going to cause great damage. I hope the Senate will decide not to proceed with it.

I yield the floor.

Mr. BURNS. Mr. President, I would like to associate myself with the amendment to the CAFE bill offered by Senator DANFORTH of alternative fuel vehicles. I would also like to commend Senator RIEGLE of Michigan, who is right on target. There is not a vast amount of technology out there when we talk about fossil-fuel-based fuels and trying to achieve a better miles per gallon on automobiles today. We do it at the risk of safety.

As I stated the other day, I do not know how many Senators here have taken a cutting torch and removed people from a small car after an accident. You cannot even recognize them. I also had a daugther who was involved in an accident—broadsided by a truck. Had she been driving a little bitty car, that young lady might not be with us today.

Under the Alternative Fuels Act, the total amount a manufacturer can boost its overall CAFE rating by making flexible fuels vehicles is limited. For model years 1993 through 2004, the maximum increase in limited to 1.2 miles per gallon; and for the years 2005 through 2008, it is limited to 0.9 miles per gallon, limits on the CAFE increases.

It would not affect the way in which the credit for a flexible fuel car is calculated. We need this amendment if automobile companies are gong to truly begin to design and build alternative fuel vehicles.

Consumers currently have no real choice in the marketplace, even if they want to contribute to lessening of our dependence on foreign oil. Nearly half—when I say nearly half, it is getting close—of our oil needs right now are coming in from foreign sources. We have heard it stated over and over again on the floor of this body. We in Montana are very proud of our vast fuel-based resources. I do not care if you want to talk about coal, oil and gas, ethanol or methanol, Montana is rich in alternative fuel resources.

In addition, our State, along with others in the west and the intermountain west are seemingly poised to provide alternative energy answers to America's energy needs in the foreseeable future. It is clear to me, since I have joined the U.S. Senate, that alternative fuels are the fuels of the future. Our traditional fuels are important; do not mistake me. But in the long-term future of this country, alternative fuels are certain to play an even more crucial role.

I believe the time is right for the forward movement in this Congress and in this administration. The President has offered his clear air legislation which calls for alternative fuels use in a way not contemplated 10 years ago. In addition, the Energy Committee has been moving forward on its own alternative fuels agenda.

The Senate Finance Committee recently agreed to an amendment to the budget reconciliation bill, clarifying that the ethanol used in the manufacture of ETBE, ethyl tertiary butyl ether, qualifies for the alcohol fuels credit. This is a major step forward for this important fuel octane enhancer.

We are making progress. But more needs to be done. And we in the West, who have not always fully shared in the progress that has been made elsewhere need to begin now to offer the solutions to the problems that will soon confront all of us.

WIFE, women involved in farm economics, has worked diligently for the past several years in raising the American consciousness to the virtues or grain based alcohol fuels. It is in grassroot efforts such as theirs that true changes will be accomplished. In the meantime, we need to do what we can to help move the process forward. This amendment will help to do that.

Mr. President, I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, I rise to speak about the problem this bill is intended to address. We have had a great deal of debate about the details and which approach is better. We have had some debate about whether we should move forward and do something or wait and do nothing.

But I think it is important to step back from the details just for a moment and look at the larger problem within which this debate takes place. It is not just a problem defined by the recent events in the Persian Gulf, but let us take those events as a starting point. In response to the invasion of Kuwait by Iraq, we have put together a very impressive military policy. The President has also coordinated a very impressive diplomatic policy.

What we do not have is an energy policy. We have not had one for quite a long time. The recent events in the Persian Gulf merely underscore the need which has existed since well before the invasion of Kuwait by Iraq. We are more dependent on foreign sources of energy today than we were when the great energy crisis of 1973 hit. We are more dependent on foreign energy sources today than we were when the second energy crisis of 1979 hit.

When you compare what we are doing with energy to other nations around the world, with whom we now compete in the world economy, the comparison is really striking. We have about 2 percent of the world's people. We are consuming more than 25 percent of the world's energy. Well, you might say that includes a comparison with all of the developing nations which do not use a lot of energy per capita. Well, look at the comparison between us and the Federal Republic of Germany, or Japan, or any of the other industrial nations with which we are competing everyday in the world marketplace.

The fact is, for every unit of gross national product that we produce, we

use twice as much energy to get that unit of gross national product as our competition uses. That does not make good sense. It is something that simply cannot be allowed to continue.

So I hope that the President of the United States, building upon his success in this diplomatic policy, building upon the Nation's unprecedented support for our military deployment to the sands of Saudi Arabia, would not come before the Nation and introduce a national energy policy, which would emphasize the new efficiency with which we use energy, emphasize conservation to save energy, knew technologies that can substitute for some of the ones that are so wasteful in the environmental that is destructive today.

The President has been asked why he does not talk about this, and he decided to announce his policy on the spot. You may have seen it; it was up at Kennebunkport. Here is the full text of the President's stirring call for a national energy policy. "I call on all Americans to conserve."

Mr. President, even that was a statement some in the television audience had difficulty hearing because of the sound of that high-powered motorboat in the background. The words themselves were so thin and so weak and so faint as to make a mockery of the phrase "energy policy."

The fact is, we as a nation need leadership. We also need followership. I think those of us in the legislative branch of Government understand how difficult it will be to put in place meaningful energy policies, and the President understands that, as well. But we need leadership from the President in articulating and selling to the American people a national energy policy that makes sense.

At this moment in our history, as we mobilize our military resources in Saudi Arabia and in the Persian Gulf, it is easier to see clearly why it was a mistake 10 years ago to abandon the policies that were encouraging the development of alternatives to the wasteful technologies that we use so much today.

When you stop and think about it, we arrived at this point after two crises, which I mentioned, that were both followed by a wave of national awareness and concern and a new sense of urgency and demands from all over our Nation that we not allow ourselves to be so dependent on foreign oil.

The first crisis of the early seventies forced reductions, and we relaxed a little and forgot that sense of urgency. In 1979 the same thing happened all over again. After that sense of urgency waned, then we went right back to the false complacency that characterized our policy up until the invasion of Kuwait.

What is different this time is that even now after the events in the Middle East, even after the price of oil has reached an all-time high, $35 a barrel on Friday; I do not know what the closing quote was today——

Mr. RIEGLE. Up $3.

Mr. GORE. Up $3; $38, I am advised by my colleague.

Even after the price rises began, this time we still do not have leadership from the White House to catalyze the development of a national energy policy. That is just wrong. I have to quote my favorite philosopher, Yogi Berra, who said "It's deja vu all over again."

How many times do we have to go through this kind of rude surprise and economic shock before we get the kind of policy that can be sustained over time—to save energy and avoid this kind of dangerous overdependence?

I just think it is time to start recognizing the fundamental linkages between energy policy, national security policy, economic health, and environmental quality. For the last 10 years we had leadership that has chosen to ignore those linkages. During the 1980's, development of energy-efficient and alternative energy technologies suffered from inattention and sometimes even outright hostility from the executive branch of the Government.

I hear in Mr. Sununu's derisive statements about conservation an echo of what James Watt and Anne Burford used to say about conservation. I really do not understand where this hostility comes from, where the derision comes from, where the absolute determination to stifle any kind of meaningful energy policy comes from. I think it is irresponsible to delay any further important decisions about securing our energy future. And it is just not happening.

The current exercise that the Department of Energy has under way to develop its so-called national energy strategy seems to be nothing more than paper at this point. There are some awful good people over at DOE who would like to do more. But 2 years after this administration has come to office and 10 years after its predecessor began the effort to destroy national energy policy, we are still waiting and still hoping for a real national energy policy to emerge from the current exercise. I hope it does. It would be a refreshing break from the administration's usual style of dodging the hard decisions on energy and opting instead for recommendations that ultimately translate into inaction.

I would like to say just another word about this question of efficiency which is linked to conservation. We made some great strides after the first two oil shocks on efficiency. But then, in 1986, efficiency gains leveled off and they have not gone up since that time.

What caused this slowdown? Well, lower energy prices did, and also a decreased Federal commitment to conservation. In short, our Nation's leadership has failed, or refused, to fill the policy vacuums created by cheap energy.

In a few areas, we lead the world in energy-efficient technology—appliances, lighting products, windows, and a few other examples. But the sad truth is today other nations, notably Japan, are developing and marketing their own technologies that are better in this area than ours because more attention has been paid to it.

The same is true in the development of renewable energy sources like solar and biomass. The same is true of a number of promising new energy technologies, especially voltaic where we are losing the lead to the Japanese who recognized the tremendous world market potential for that technology. We really have to reverse this trend and recapture the lead.

Of course, in the transportation sector, because it accounts for such a large fraction of the energy we use, we need to pay attention to efficiency improvement there as well. That is what this debate is all about. There will be amendments. Let us look at the amendments. Let us try to get the best bill we can. But given a choice between doing something and doing nothing, it seems to me, especially in these circumstances, that choice is pretty clear.

U.S. TRANSPORTATION SECTOR ENERGY USE

If there is an economic sector in the United States where improvements in energy efficiency can simultaneously benefit our Nation's economy, environment, and national security, it is our Nation's transportation sector.

So, one of the first steps to demonstrate U.S. leadership in attaining energy security and protecting the global environment must be to increase the efficency of our transportation sector, in which each American consumes more energy than a person in almost any other country consumes in all economic sectors combined. We do not need to speed development of environmentally sensitive areas to produce more oil for our vehicles; we do not need to be so dependent on the Middle East for our energy supplies; we can produce that oil, so to speak, in an environmentally and economically sound way, through increased energy efficiency, including increased vehicle fuel efficiency.

We need to send clear signals to the manufacturers: we want efficiency improvements to continue, we want you to invest in the R&D needed to meet increased efficiency standards, we want the U.S. automotive industry to be the most competitive in the world, and we want the energy, economic, and environmental rewards that an ef-

ficient passenger vehicle fleet will bring.

GROWTH IN VEHICLE MILES TRAVELED

Mr. President, let's define the problem—the problem here is defined as, "How can we reduce the amount of oil consumed in our transportation sector, and therefore the amount of pollution and energy consumption associated with our Nation's vehicles?" Now, there are two key components to the answer. One component is the efficiency of our automobiles and trucks. But another component, just as important as the first, is the total number of miles that our Nation drives. As an illustration, if we require vehicles to be twice as efficient, but at the same time, the amount of miles driven in this country doubles, then we will still be consuming the same amount of oil as we are today. We will still be pumping the same amount of pollutants into the atomosphere, and we will still be dependent on foreign oil supplies.

Well, that is exactly what is happening. The number of vehicle miles traveled in the United States grew 2.7 percent each year between 1980 and 1986, and it is estimated that the number of vehicle miles traveled will grow about 2.5 percent per year between now and the year 2000. That means, even if we were to pass legislation today, requiring a 40-percent increase in the efficiency of our vehicles by the year 2000—about 40 mpg for new cars, and 30 mpg for new light trucks—the amount of gasoline consumed by cars and light trucks will remain approximately constant.

Looking further into the future, the Federal Highway Administration projects that in urban areas, the total number of miles traveled by vehicles will increase 50 to 80 percent by the year 2010.

Addressing the growth in vehicle miles traveled is not the subject of today's debate, but it is an issue that we must ultimately address if we truly intend to reduce our Nation's dependence on foreign oil.

RECENT TRENDS IN VEHICLE FUEL EFFICIENCY

As far as vehicle fuel efficiency is concerned, let me review some of the facts. After dramatic improvements in the 1970's, and general stability in the 1980's, average new vehicle efficiency in 1988 was actually lower than the standards set originally for 1985. The average new vehicle produced in the United States got 27 miles per gallon in 1988; the average Asian import got 32 miles per gallon. The trend away from improved vehicle fuel efficiency has been hastened by another trend during the 1980's, back toward higher horsepower; in effect, the fuel efficiency wars of the 1970s ha've been replaced by the horsepower wars of this decade.

PROBLEMS ASSOCIATED WITH INEFFICIENT VEHICLES

Clearly, improvements in vehicle fuel efficiency are long overdue, and they make sense for a variety of reasons:

Oil imports cost our trade balance $40 billion in 1988; for every 1-mile-per-gallon increase in overall car and light truck fleet efficiency, we could reduce oil imports by 320,000 barrels per day—even at only $25 per barrel, that's $3 billion off our trade deficit each year.

Our national security is threatened by an overreliance on those oil imports to fuel the majority of the entire U.S. transportation sector.

Our competitiveness in international markets is compromised by energy-inefficient products in a world where continued depletion of finite oil resources can only lead to increased fuel costs.

Our vehicle fleet contributes as much as one-third of U.S. carbon dioxide emissions—overall, our Nation emits more carbon dioxide than any other nation in the world.

Last but not least, urban air quality in many cities is not coming into compliance with standards deemed necessary to avoid adverse impacts on human health. Among the major pollutants addressed by the Clean Air Act, the two that have proven most difficult to control—carbon monoxide and ozone—are largely due to our automobiles. Over 100 urban areas are not meeting air quality standards for one or both of these pollutants.

MARKET-BASED INCENTIVES FOR INCREASED VEHICLE EFFICIENCY

This challenge will require imaginative, far-reaching, and unprecedented new programs. New CAFE legislation is a start, but I would like to see a series of new programs that dovetail with CAFE mandates, which would demonstrate to the world that our Nation at least is ready to take the lead in developing an energy-efficient economy.

I am thinking about a series of programs in which consumers pay fees for actions that lead to increased energy consumption, and get money back for actions that conserve energy. Through a series of fees and rebates, a revenue-neutral program would give consumers market incentives to use energy efficiently, and thereby to benefit our economy, national security, and to protect and restore the environment.

In the case of automobiles, fees collected from the purchase of new vehicles with low fuel efficiency would go to pay for rebates on vehicles with high fuel efficiency. Over time, this concept could be applied to other energy-consuming products and, in general, to other products with a significant impact on the global environment, from electric stoves to ozone-depleting refrigerators.

This type of market-based program would aim squarely at reducing energy consumption and minimizing emissions of pollutants. At the same time, such market incentives would encourage the development, and introduction, of the technologies and techniques of sustainable development.

VEHICLE FUEL-EFFICIENCY IMPROVEMENTS

One could expect vehicle efficiency improvements to come into the market much more quickly as a result of such a program, because consumers would be demanding fuel-efficient cars and trucks. A market-based incentive program would allow consumers, not just the Government, to put pressure on the automakers to make efficiency improvements. As we all have learned, that is the most effective kind of pressure.

Basically, such a program would work as follows: At the time of purchase, a consumer buying a car that has a fuel economy lower than an established standard would pay, to the dealer, a fee based on the amount by which the car's fuel economy was below the standard. The fee would be transferred from the dealer to a trust fund. Purchasers of vehicles with fuel economies greater than the standard would receive a rebate form that fund. The program would be overseen by, for example, the EPA, to ensure that revenue flowing into and out of the fund was regulated in a manner that guaranteed the fund would remain revenue-neutral.

ENERGY EFFICIENCY IMPROVEMENTS FOR APPLIANCES AND BUILDINGS

The concept could be extended to other energy-consuming products, such as new appliances—refrigerators and water heaters, for example—and to new buildings. In all cases, a fee or rebate would be based on the relative level of energy used by the product over its lifetime.

In addition to energy efficiency, the concept could be applied to encourage the purchase of technologies that do not rely on ozone-depleting chemicals—charging fees on appliances, for example, that rely on ozone-depleting chemicals, and awarding rebates for the purchase of alternative technologies that do not pose a threat to the ozone layer.

This is a serious matter, though, Mr. President, and before closing I simply would like to say that on Saturday morning in my home town of Carthage, TN, population 2,000, I went over to a breakfast for the 1175th Quartermaster Unit. A lot of the members of that National Guard unit probably thought a few years back the chances were pretty slim they would be called up and sent to the desert of Saudi Arabia. But along with many other units in Tennessee, they were called up and this was a good-bye ceremony, where their wives and husbands and

children and parents came, and I shared that morning with them and helped serve breakfast and we shared some words together and the chaplain had a moving prayer and it was a moving ceremony all the way around. I thought about this debate while I was there with them Saturday morning.

Now, Monday, here we are talking about this same subject. And I will just tell you if the National Guardsmen and National Guardswomen from Carthage, TN, are going to have to go over to Saudi Arabia because of Saddam Hussein threat to Kuwait and his threat to the oil fields, it seems to me like we can do a better job in this country of promoting energy efficiency and supplementing that military policy which has called them to the desert and supplementing that diplomatic policy which has seen notable successes by our Secretary of State and President with an energy policy that begins to address some of the difficult decisions that have been put off for 10 years.

So this matter is an important one, and I wanted to try to put it into that larger context, and I look forward to the debate on this bill and on the amendments as that debate proceeds.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 2755

Mr. DANFORTH. Mr. President, I ask unanimous consent that there be a vote on my amendment concerning flexible fuel vehicle credits this evening.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I further ask unanimous consent that it now be in order to order the yeas and nays on that amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I rise in support of S. 1224, the Motor Vehicle Fuel Efficiency Act of 1990.

It is interesting that Saddam Hussein and his Iraqi army have mobilized the United States Congress and American people faster than any time in recent memory. In fact, his invasion of Kuwait was such an unlawful and unjustified attempt to dramatically alter the balance of power in the Middle East that it virtually guaranteed the kind of unity of reaction, and his use of Western hostages and human shields has sickened freedom-loving people around the world.

I think President Bush has wisely used the proper mix of diplomatic pressure and the threat of military force to build a consensus in the United Nations by diplomatic and economic and military pressure to push Saddam Hussein out of Kuwait.

But this crisis is not just about the sovereignty and sanctity of nations. It is also about oil. Some people have even called it a threat to our way of life.

Mr. President, there is something about our way of life that is going to have to change in light of the Iraqi invasion of Kuwait, and that is dependence on foreign oil and the way we use and, unfortunately, the way we misuse national resources.

The United States currently imports about 45 percent of its oil. That is more than we imported before the oil embargo of 1973. We ought to be ashamed of ourselves for that.

Mr. President, I believe it is time to get serious about energy conservation. And that is going to mean more than one line in a Presidential speech or a congressional speech.

Yet the administration opposes this bill that is sensible before us, and instead of stressing conservation, it wants to open up the Arctic National Wildlife Refuge to drilling. It is allowing its Forest Service staff to push a plan to squeeze a few more barrels out of our precious public lands. A lot of the things that it wants to do, a lots of areas where it wants to drill, notwithstanding the danger to the environment, would get us less oil than we could get by just stressing good, sensible, and reasonable conservation methods.

So the proposals they have made are wrong headed. The most effective means of reducing foreign reliance on oil and protecting our environment is to develop a national energy policy where energy conservation is the primary component. We have a long way to go.

But Senator BRYAN's Motor Vehicle Fuel Efficiency Act is a good place. The Senator from Nevada has worked tirelessly on this important piece of legislation. Senator BRYAN deserves our thanks.

We cannot continue to pretend that fossil fuels are renewable resources. Let us learn this lesson today for having squandered our chance to learn from the oil crisis of the 1970's. Do we want our successors to be standing here 4 years from now, 6 years from now, 10 years from now, saying in 1990 the U.S. Senate had a chance to act and did nothing about it?

I do not want the next Senator who represents Vermont in my place to be standing up here and saying, "Just awhile ago they could have done something to cut our dependence on foreign oil and they did not."

I want you to know, Mr. President, that Vermont's voice, at least as I represent them, will be to stand up for this very sensible conservation method. It is a good method. It makes sense environmentally and economically.

Furthermore, it should be very obvious to everybody in this country by now, it does a great deal to protecting our national security. We put ourselves in a position that we allow our dependence on imported oil to make it possible for a handful of countries that would otherwise be insignificant on the world picture to be able to shape our foreign policy, our economic policy, domestic policy, in a way no countries have been able to do in the past 100 years. Let us at least diminish that. Let us take back that part of our national security, take back that part of our economic security, take back that part of our domestic security, by cutting out our dependence on imported oil. That is why I support this bill.

I commend the Senator from Nevada and those who joined with him to bring this bill before us.

Mr. BRYAN. Mr. President, we have a couple of housekeeping matters which I believe my distinguished colleague, the senior Senator from Michigan, and I can agree on. One is to perfect what Senator DANFORTH intended to accomplish, to which there is no objection. In that vein, I ask unanimous consent that a vote on the Danforth amendment No. 2755 occur this evening upon disposition of the Simon amendment, and that no further amendments be in order to the Danforth amendment No. 2755.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2756

Mr. BRYAN. Mr. President, I believe that we have agreement on the Bryan-Gorton amendment which incorporates the provisions of the NHTSA reauthorization act. I believe we have agreement on that. I ask unanimous consent that amendment be added to the bill.

The PRESIDING OFFICER (Mr. LEAHY). Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I need to ask at this time to refer back to the Simon amendment for purposes of offering a motion to table procedurally, if I may.

The PRESIDING OFFICER. The Chair has to apologize to the Senator from Nevada. Could he restate his request?

Mr. BRYAN. The Senator from Nevada apologizes to the Chair. What we need to do procedurally is to get back on the Simon amendment for a moment so that a motion to table would be in order. That, of course, will occur tonight with a rollcall vote, as

we discussed with the Senator from Michigan.

The PRESIDING OFFICER. Is the Senator from Nevada asking that the Bryan amendment be agreed to?

Mr. BRYAN. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2756) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair would advise the Senator from Nevada that a call for the regular order would bring back the Simon amendment.

Mr. BRYAN. I do not want to do anything to preclude the senior Senator from Michigan. Let me move through that first. I know the junior Senator from Michigan also desires to speak, and it is not my purpose to in any way preclude him from having an opportunity to do so.

AMENDMENT NO. 2722, AS MODIFIED

Mr. RIEGLE. If the Senator would yield just briefly, we had talked about a modification to the amendment that I offered earlier on the need for a national energy plan. You will recall in the last paragraph of that amendment, which is pending and a vote has been locked in on it, which we may well vitiate, there was this issue over whether we would use the phraseology "within 6 months of enactment" which would tie it to this bill. Senator GORTON raised an issue with respect to this.

I am going to propose that those words be stricken. I will make such a modification to my amendment that "within 6 months of enactment" would be replaced with this language: "no later than May 1, 1991."

The PRESIDING OFFICER. The Senator from Michigan would need unanimous consent to modify his amendment.

Mr. RIEGLE. I ask unanimous consent to so modify my amendment.

The PRESIDING OFFICER. The Chair hears no objection. Without objection. The amendment is so modified.

Would the Senator send the modification to the desk?

The amendment, (No. 2722), as modified, is as follows:

At the appropriate place in the bill insert the following new section:

SEC. . NEED FOR A NATIONAL ENERGY POLICY PLAN.

The Senate finds that

Recent events in the Mideast precipitated by the Iraqi invasion of Kuwait are a poignant and threatening reminder that the security of our economy and that of the modern industrial world is dependent on a fragile supply of energy, especially Mideastern oil;

Over a decade has passed since the United States enacted comprehensive legislation addressing our energy security;

The United States does not have an up-to-date national energy policy;

The United States needs a comprehensive, not a piecemeal, national energy policy plan meeting the following criteria:

(a) the policy would cover:

(1) all sectors of the economy,

(2) both the short-term and the long-term,

(3) both the demand for, and supply of, energy;

(b) the policy would be formulated by the President and the Congress;

(c) the policy would be based on current data and analysis and on a quantitative projection of our future energy needs and supply,

(d) the policy would include recommendations for development of new technologies to forestall energy shortages and to encourage conservation,

(e) the policy would identify the resources needed to carry out the objectives of the plan,

(f) the policy would recommend legislative and administrative actions necessary to achieve to objectives of the plan.

Current law contained in Title VIII—"Energy Planning" of the Department of Energy Organization Act of 1977 already mandates a specific procedure for creation of a National Energy Policy Plan that contains such criteria,

The President has called for creation of a National Energy Strategy that the Department of Energy has nearly completed;

Therefore, it is the sense of the Senate that in accordance with such law, the President should submit, no later than May 1, 1991, and the Congress should review and revise as necessary, a National Energy Policy Plan, including appropriate legislation to implement such plan.

Mr. BRYAN. Mr. President, if I might engage the distinguished senior Senator from Michigan in a moment of colloquy. We do not intend to object to this and will agree. However, during the course of our discussion on this it has been my understanding that the Senator, by offering this amendment, in no way indicates that, if S. 1224 should pass this body and the other body, this amendment would preclude the CAFE legislation from going into effect. It is not contingent upon it, it is supplemental to it. Am I correct?

Mr. RIEGLE. That is correct. I wish I could say that is incorrect; but the answer is the Senator is correct.

Mr. BRYAN. With that understanding, if the Senator seeks unanimous consent, I am delighted to accept that.

Mr. RIEGLE. I will accept that kind offer, and then I think we can vitiate the yeas and nays on that amendment. I ask unanimous consent that we vitiate the yeas and nays earlier ordered on the amendment on the understanding that it is accepted.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection; without objection, the yeas and nays are vitiated.

The question is on agreeing to the amendment of the Senator from Michigan, as modified.

The amendment (No. 2722), as modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BRYAN. Mr. President, I need to do one other thing. I do not intend to prolong this. Procedurally we need to get back now to the Simon amendment which is the first amendment that had been offered, and we also need to address Senator NICKLES' amendment. We are going to be able to work out something with Senator NICKLES' amendment by a second-degree amendment.

Mr. LEVIN. I am wondering if the Senator would withhold his tabling motion until after the time has expired, which I understand is 5 o'clock.

The PRESIDING OFFICER. The Chair would advise the distinguished managers of the bill that a call for the regular order would bring back the Simon amendment or alternatively the managers could ask for the regular order on the Nickles amendment which would bring that before the Senate.

AMENDMENT NO. 2714

Mr. BRYAN. Mr. President, it is our desire to expedite this so that we do not encroach upon the time that I know the junior Senator from Michigan has. I call for the regular order.

The PRESIDING OFFICER. Regular order is called for and the Simon amendment is now before the Senate.

Mr. KENNEDY. Mr. President, I am pleased to join my distinguished colleague from the State of Illinois in sponsoring this amendment to ensure that workers in the automobile industry are not required to shoulder a disproportionate share of the burden of achieving the fuel efficiency standards established under S. 1224.

The program established under this amendment will provide benefits to displaced autoworkers similar to those currently available to workers under the Trade Adjustment Assistance Program. In circumstances where it has been determined that compliance with the increased CAFE standards is the primary cause of a worker's job loss, that worker will be eligible for up to 26 weeks of supplemental employment benefits as well as counseling, testing, and placement services to assist that worker in making the transition to other employment. Benefits are, except in extraordinary circumstances, limited to employees enrolled in approved job training programs, and

total spending is capped at $50 million a year over a 5-year period.

Mr. President, this is a program that is both reasonable and necessary to ensure that the costs of achieving our national goals of reducing our dependency on foreign oil imports and improving the quality of our environment are distributed fairly, and that workers and their families are not asked to pay disproportionately for these national initiatives.

Studies conducted by the Office of Technology Assessment and the Department of Energy have concluded that the fuel efficiency standards established under S. 1224 can be achieved with existing technology, and without significant worker dislocations. If this is the case, and I hope it is, then this amendment will cost us nothing. But if the pending legislation, whose goals I support, does in fact have the negative impact of displacing workers, then we owe at least this modest level of assistance to those workers and their families.

Achieving reduced dependency on foreign oil and a cleaner, healthier environment is not a zero sum game. When the Nation wins, workers do not have to lose. There is no fundamental incompatibility between higher fuel efficiency standards and the livelihoods of those who build our cars. We do not have to pit auto workers against fuel efficiency, or one region against another. We can fashion reasonable legislation to reduce the burden of our action on innocent victims and their families.

The cost of the Simon amendment, if there is a cost, will be only a fraction of the benefit that the Nation will gain from increased fuel efficiency. Basic equity requires us to pay this cost, as an investment in a stronger nation and a sounder economy for the future. We must handle the transition that this legislation will entail with compassion and common sense in a manner that does not bring unnecessary uncertainty and pain to the workers in the automobile industry.

I command the Senator from Illinois for raising this issue, and I urge the Senate to adopt his amendment.

Mr. BRYAN. Mr. President, I move to table the Simon amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2715

Mr. BRYAN. We next call for the Nickles amendment.

The PRESIDING OFFICER. The regular order has been called for on the Nickles amendment. The Nickles amendment is now before the Senate.

AMENDMENT NO. 2758 TO AMENDMENT NO. 2715

Mr. GORTON. Mr. President, I have an amendment to the amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2758 to amendment No. 2715.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike "SEC. 510." and all the following matter prior to page 2, line 14, and insert in lieu thereof the following:

"SEC. 510. (a) The Governmentwide average of all passenger automobiles acquired, on and after the expiration of the 120 days following the date of enactment of the motor Vehicle Fuel Efficiency Act of 1990, for and by the agencies, departments, and other instrumentalities of the executive, legislative, and judicial branches of the United States Government in each fiscal year shall meet or exceed the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, shall meet or exceed the weighted national average fuel efficiency of new vehicles determined by the Secretary in accordance with this Act, sold in the United States during the preceding fiscal year. Commencing with model year 1995 and each model year thereafter, the Governmentwide average of all light trucks purchased by such agencies, departments, and instrumentalities shall meet or exceed the weighted national average fuel efficiency of new such vehicles.

On page 2, lines 14 and 17, redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

Mr. GORTON. Mr. President, Senators will remember that the Senator from Oklahoma this morning introduced an amendment designed to see to it that the Federal Government lives up, essentially, to the theme, the spirit of the requirements it was imposing on automobile fleets overall by requiring that purchases of automobiles for the use of the Federal Government meet the standards set by this bill.

The way the amendment was written, it required each individual automobile to meet those standards, which is of course not the imposition which the bill places on fleets. This second-degree amendment adopts the spirit of the Nickles amendment. It simply says that on average over a period of each year, the purchases of automobiles and small trucks by the Federal Government will meet the fleet requirements laid out for the manufacturers themselves.

With that change, the amendment is acceptable to the sponsors of the bill. I am told it is acceptable to the distinguished Senator from Oklahoma [Mr. NICKLES] and he has authorized me to ask unanimous consent that the yeas and nays on his amendment be vitiated.

I think it would first be appropriate to put the amendment to the amendment to a vote, and then I will ask for a vitiation of the yeas and nays.

The PRESIDING OFFICER. Is there further debate on the amendment?

If there be no further debate, the question is on agreeing to the amendment to the amendment.

The amendment (No. 2758) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. With the authorization of the Senator from Oklahoma, I ask unanimous consent that the yeas and nays on his amendment be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered. The yeas and nays are vitiated.

Is there further debate on the amendment?

If there be no further debate, the question is on agreeing to the amendment of the Senator from Oklahoma as amended by the Senator from Washington.

The amendment (No. 2715), as amended, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, there was some discussion last week of a report of the Energy Environmental Analysis, Inc., the so-called Duleep report, or the Duleep study, which serves as the principal basis for the CAFE standards in this bill.

It is clear, Mr. President, no matter how you read the Duleep numbers, they do not support the standards that would be imposed by S. 1224. Mr. Duleep is acknowledged to be the leading independent expert on automobile fuel efficiency, and his conclusions simply do not support or come close to supporting the numbers that are set forth in this bill.

S. 1224 requires that domestic automobile manufacturers reach 33 miles per gallon by 1995. What does Mr. Duleep say that we can do by 1995? Initially, his first cut was that we could get to 31 miles per gallon without downgrading size or performance. That was the first Duleep conclusion. Not 33 miles, as proposed by the bill, but 31 miles per gallon.

Then Mr. Duleep came and revised his earlier figures and he determined

that we cannot come close to 31 miles per gallon. When he looked at his numbers again, he concluded that he had overestimated the improvements that could be made through technology and failed to account for the impact that new safety and emissions standards will have on fuel efficiency levels.

Mr. Duleep concluded—and again, this is the independent expert relied on most heavily by the committee—Mr. Duleep concluded that 28 miles per gallon is the highest cost-effective level that can be achieved by 1995 and that 29.1 miles per gallon is the maximum technology level. That is 5 miles per gallon lower than the level mandated in the bill for a cost-effective improvement, and 4 miles lower for a maximum technolgy case.

The same is true for the year 2001. S. 1224 requires 38.5 miles per gallon. Duleep says that 32.4 is the cost-effective level, and 35.7 is the maximum technology level. Either way, it does not support the levels mandated by this bill.

On June 4 of this year, Mr. Duleep explained his revised estimates in a letter to me. The letter states as follows:

You are probably aware that the study on domestic manufacturer CAFE conducted by EEA for DOE concluded that a "maximum technology" level of 39 miles per gallon was feasible in 2001 if size, luxury, and performance were constant at 1987 levels. The study did not account for new safety or emission standards other than airbags. It also concluded that the maximum technology scenario was technologically risky and not cost effective to the consumer at the expected 2001 gasoline prices. * * *

The study—

He continued—

was the subject of intense manufacturer scurtiny. Having met with the manufacturers to review the technology improvement forecasts, we have made modest adjustments to the technology specific benefits, revising some upward, others downward. The net effect was a downward adjustment of about 1.1 miles per gallon. In addition, we recognized some improvements already present in the baseline that led to further downward adjustment of 0.4 miles per gallon, for a net adjustment of 1.5 miles per gallon.

New emission standards and safety standards planned for the 1990's may bring about a reduction in fuel economy of 0.6 miles per gallon.

Finally, if one considers that it is too late to roll back performance, luxury, and size to 1987 levels, but instead freezes these variables at expected 1991 levels, a further reduction of 1.2 miles per gallon is estimated for the 2001 forecast.

Here is his conclusion:

My revised CAFE estimate in a "maximum technology" scenario for the domestic manufacturers in 2001 is 35.7 miles per gallon.

In short, Mr. President, Mr. Duleep has now determined that the maximum technologically achievable CAFE level for 2001 is not 38.5, as the bill requires, but 35.7 miles per gallon. And that fuel economy level, according to Mr. Duleep, is "technologically risky and not cost effective to the consumer."

But this risky and expensive CAFE level is 3 miles per gallon below the requirements of Senate bill 1224. What levels of fuel economy does Mr. Duleep think are cost effective? He has provided us with this answer, too.

According to Mr. Duleep, the maximum cost-effective CAFE level for 2001 is 32.4 miles per gallon. That is more than 6 miles per gallon below the standards imposed by the pending bill. If supporters of S. 1224 would follow the study that they rely on in the committee report and go with the levels that that study says are practical, we would have a more realistic bill.

The proponents of the bill then fall back to an EPA study that they rely on. They say that a technical report issued by the EPA in May 1989 concludes that if we take the most fuel-efficient model presently available today in each size category, we would achieve a 33.9-mile-per-gallon fuel fleet average.

But that is the best in class vehicle that they are looking at. The proponents when they rely on a EPA report are not looking at the average of the class, as you must do to fairly report that study. They look at the best vehicle in the class, from their perspective.

And the EPA report indicates that the best in class vehicle, the one that the proponents have to rely on to substantiate the conclusion, and the only thing they can rely on, that that vehicle, which is the best in class, is on average over 500 pounds, or 20 percent lighter, than the average vehicle in the class, and these vehicles also have markedly lower levels than the average vehicle in their class.

According to the EPA report, their engines are 36 percent smaller, have 26 percent less horsepower and achieve 12 percent slower acceleration. In short, Mr. President, the EPA report itself indicates that the so-called best-in-class vehicles which the proponents are relying on are smaller, slower, and less powerful then the typical vehicle on the street today. The EPA report does not fairly support the conclusion that we can achieve the standards in the bill without sacrificing vehicle size and performance.

Mr. President, do I need to make a unanimous-consent request at this point?

The PRESIDING OFFICER. We are just about at the hour where we will go to S. 1511.

Mr. RIEGLE. Will the Senator yield for a moment? I want to make a unanimous-consent request.

Mr. LEVIN. I will be happy to yield.

Mr. RIEGLE. I am wondering how much time my colleague feels he needs. I will make that request now.

Mr. LEVIN. I will need a few minutes——

THE PRESIDNG OFFICER. Is the unanimous-consent request being made for the extension of time?

Mr. LEVIN. I am wondering if we can withhold. Are the managers who are supposed to be on the bill at 5 presently here? I do not want to cut into their time with whatever request I make. If not, I would like 4 additional minutes.

Mr. RIEGLE. I ask unanimous consent the Senator from Michigan be given 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I have a letter that has just come in from William Reilly that needs to be read into the RECORD that is exactly on the point Senator LEVIN was just making. It is a new letter from the Secretary. This might be the appropriate point for that letter to be printed in the RECORD, and I ask unanimous consent it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC September 24, 1990.

Hon. GEORGE J. MITCHELL,
The Majority Leader,
U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: I am writing with regard to S. 1224 which is now before the U.S. Senate. I want to add my opposition to that of Energy Secretary Watkins and Transportation Secretary Skinner to S. 1224. I believe, as they stated in their letter of September 13, 1990, that the fuel economy levels required by S. 1224 are not achievable with available fuel technology without sacrificing performance and size.

In addition to the technical feasibility, there are other important factors which need to be considered before a decision can be made on fuel economy improvements. These include the effects of the proposed changes on the competitiveness of the domestic auto industry and the changes in vehicle design and product mix that would be required by overly stringent standards. These also include a potential impacts on air quality because higher vehicle costs would likely cause some consumers to keep their older, less fuel efficient, more polluting automobiles longer.

I also want to reiterate the point Secretaries Watkins and Skinner made regarding auto industry's engineering resources. The Clean Air Act and other new requirements will tax the ability of the industry without the additional need to make rapid changes in fuel economy technology.

I urge Congress not to rush ahead with ill-considered policies, such as S. 1224 that may unnecessarily jeopardize other equally important goals.

Sincerly yours,

WILLIAM K. REILLY.

Mr. BRYAN. Mr. President, if the distinguished Senator from Michigan will yield for just a moment, I ask

unanimous consent for 2 minutes after he finishes his remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. At 5:08, we will resume consideration of S. 1511.

The Senator from Michigan.

Mr. LEVIN. Mr. President, let me briefly read a letter from Administrator Reilly, of EPA, to Senator MITCHELL, which Senator RIEGLE just made reference to:

DEAR SENATOR MITCHELL: I am writing with regard to S. 1224, which is now before the U.S. Senate. I want to add my opposition to that of Energy Secretary Watkins and Transportation Secretary Skinner to S. 1224. I believe, as they stated in their letter of September 13, that the fuel economy levels required by S. 1224 are not achievable with available fuel technology without sacrificing performance and size.

In addition to the technical feasibility, there are other important factors which need to be considered before a decision can be made on fuel economy improvements. These include the effects of the proposed changes on the competitiveness of the domestic auto industry and the changes in vehicle design and product mix that would be required by overly stringent standards. These also include potential impacts on air quality because higher vehicle costs will likely cause some consumers to keep their older, less fuel-efficient, more air-polluting automobiles longer.

I also want to reiterate the point Secretaries Watkins and Skinner made regarding the auto industry's engineering resources. The Clean Air Act and other new requirements will tax the ability of the industry without the additional need to make rapid changes in fuel economy technology.

I urge Congress not to rush ahead with ill-considered policies, such as S. 1224 that may unnecessarily jeopardize other equally important goals.

Mr. President, as the Administrator made reference, both the Secretary of Transportation and the Secretary of Energy have firmly concluded that the requirements of the pending bill are not technically feasible and could have devastating effects. As the Secretary of Transportation stated in a March 7, 1990, letter regarding a virtually identical proposal then pending:

The amendment would have a devastating impact on American consumers, auto workers, highway safety, and our vehicle industry. While there are a number of reasons to oppose this amendment, we would highlight the following points:

Here the Secretary of Transportation wrote the following:

Technical Feasilbility. The technical feasibility of achieving CAFE standards * * * without significant vehicle downsizing, has simply not been demonstrated. Most readily available techniques for improving fuel economy (e.g., front-wheel drive, four-speed automatic transmissions, aerodynamics) have already been implemented in much of the U.S. fleet. The Administration believes that continuing application of those technologies will provide only modest CAFE improvements—much lower than suggested by proponents of this amendment. The proposed CAFE standards would surely require significant additional downsizing of both the passenger car and light truck fleets.* * *

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. LEVIN. I thank the Chair. Mr. President, the Secretary of Transportation went on to say the following:

These drastic increases in CAFE standards are highly impractical since they would radically curtail the choice of new vehicles available to American consumers. Manufacturers would be forced to scale back or eliminate the production of large and mid-size cars and trucks, leaving only small vehicles for sale—which would adversely affect those with large families, those in carpools, and those who desire the security of large cars, among others.

The Secretary of Transportation went on to say that:

Major downsizing of vehicles, such as the amendment would require, does have a noticeable adverse impact on the safety of occupants. Our statistical analyses have demonstrated that the market-driven downsizing of the 1970's had adverse safety effects. In my view, it would be a tragic mistake to enact legislation (despite its noble intentions) that served to undermine this country's progress in highway safety.

And, Mr. President, Energy Secretary Watkins wrote, in June 1990, that:

Notwithstanding the claim made in section 2 of the bill, DOE has not estimated that * * * "increased fuel efficiency is possible utilizing currently available technology and without significant changes in the size, mix, or performance of the fleet * * * [and] that the fuel economy of the entire new car fleet could range from 33 to 38 miles per gallon by 1995."

This is the conclusion of the Energy Secretary:

In fact, DOE analysis indicates that the CAFE requirements that this bill would place on U.S. manufacturers could not be achieved without significant changes to the size, mix, and performance of these vehicles.

Mr. President, that conclusion is exactly the opposite of the conclusion which has been stated over and over again on this floor that the standards in this bill could be achieved without significant downsizing.

He goes on to say:

These changes would cause significant economic losses to domestic manufacturers. Consumers would be unable to purchase the vehicles that meet their requirements and could face increased risk of injuries and fatalities due to reduced vehicle weight and size.

The motor vehicle industry is already facing substantial regulatory demands, including the emerging Clean Air Act amendments and upgraded side-impact protection. These air quality and safety requirements need to be carefully assessed before imposing yet another, potentially conflicting, set of requirements on the automobile industry.

In short, the standards imposed by the pending bill go far beyond the levels that the Department of Transportation, the Department of Energy, and their independent experts have concluded are technologically feasible.

Moreover, these standards address only one industry—the automobile industry—and place no other requirements on any other industry that consumes oil or other fossil fuels.

Section 2 of the bill states that the light duty vehicle fleet in the United States accounts for about 39 percent of U.S. oil consumption. But the bill does not even attempt to identify the other 61 percent of oil consumption in this country. And it does not even start to consider the conservation of other fossil fuels, which also contribute to pollutant emissions, the greenhouse effect, and our dangerous energy dependency.

Fossil fuels are consumed in huge quantities by cement kilns, iron and steel plants, pulp and paper mills, synthetic fiber plants, chemical plants, glass plants, and electric utilities, among others. Yet this bill, which purports to address energy conservation and the emission of greenhouse gases, imposes no requirements on these other industries.

The Department of Energy is working on a national energy strategy, which it expects to have ready in draft form by the end of the year. The Environmental Protection Agency has already issued a lengthy report detailing dozens of ways in which emissions of carbon dioxide can be reduced.

Just last month, the Senate itself approved a bill requiring the development of a least cost national energy policy. The stated purpose of that bill is to—establish a national energy policy that will fully consider the contribution of energy use to potential changes in global climate and will include cost-effective strategies to lessen the generation of energy related greenhouse gases consistent with the achievement of other domestic energy, economic, social, and environmental goals.

Instead of waiting for this policy, however, the committee chose to single out one sector of the economy to make huge changes without regard to whether they are cost effective or technologically feasible. Indeed, there is no evidence that the committee even considered the costs of energy conservation and reduction of carbon dioxide emissions by other sectors of the economy or attempted to develop a reasonable, balanced, least-cost approach to these problems.

Mr. President, the automobile industry must do its share to conserve energy and it must do its share to reduce the emission of greenhouse gases. I believe we should adopt cost-effective measures to achieve these objectives and I believe that the automobile industry should be included in a comprehensive energy and greenhouse strategy.

At the same time, however, we should not require wasteful steps that could cost American consumers billions of dollars, severely restrict consumer choice, and seriously weaken an important industry in this country.

Mr. President, this bill would impose extraordinary and unnecessary costs on consumers and workers in order to achieve standards that independent experts have concluded are not technologically or economically feasible in the timeframe established.

Finally, enactment of this bill could cost lives. Just last week, the Insurance Institute for Highway Safety issued a report concluding that the toll could be in the thousands. I read from that report last week, but I think it bears repeating in this debate. The Insurance Institute report states:

Car size is perhaps the most important single factor when it comes to protecting occupants in crashes. All other things being equal, people in larger cars sustain fewer injuries in crashes than people in smaller cars. Why? Because the smaller cars have less crush space to absorb energy and, therefore, higher crash forces are transmitted to their occupants.* * *

Overall, the death rate in the smallest cars on the road is more than double the rate in the largest cars. For every 10,000 registered cars one to three years old in 1989, 3.0 deaths occurred in the smallest cars on the road, compared with 1.3 in the largest cars. The death rate is at least twice as high in small cars, compared with large cars, in both single- and multiple-vehicle crashes. The effects of car size are true without regard to the ages of the drivers.* * *

Insurance claims for occupant injuries are also more frequent in small cars than in large ones. Among the 29 two- and four-door cars with the highest frequencies of injury claims, 27 are small. Two are midsize. And not one of the 29 is large. Among the nine two- and four-door cars with the lowest injury claim frequencies, on the other hand, seven are large. The other two are midsize, and not one of the nine is small. * * *

What's true is this: A relationship exists between death rates and fuel use, even if it isn't a precise one-to-one relationship. * * * According to a regression equation estimated by Institute researchers from death rates and EPA fuel ratings of 47 four-door cars, on average every one mile-per-gallon improvement in fuel economy translates into a 3.9 percent increase in the death rate.

Let me repeat that last sentence. According to the Insurance Institute for Highway Safety, "every one mile-per gallon improvement in fuel economy translates into a 3.9 percent increase in the death rate."

If this is true, it means every 1-mile-per-gallon increase in CAFE standards kills 1,800 people per year. This bill, which would require an 11-mile-per gallon increase in CAFE standards, would result in 20,000 deaths per year. That's 20,000 added deaths per year, estimated to occur if this bill becomes law.

Mr. President, the Insurance Institute does not stand alone in reaching this conclusion. It is supported by the Department of Transportation, the National Highway Traffic Safety Administration, and other independent experts.

A 1989 report issued by the Department of Transportation concludes that downsizing of cars has resulted in increased traffic fatalities. According to the report:

Narrower, lighter, shorter cars have higher rollover rates than wide, heavy, long ones under the same crash conditions. During 1970-82, as the market shifted from large domestic cars to downsized, subcompact or imported cars, the fleet became more rollover prone.

The net effect, the Department of Transportation concluded, was an increase of approximately 1,340 rollover fatalities per year.

Another 1989 study, by researchers at Harvard University and the Brookings Institution concluded that automobile weight reductions in the late seventies and early eighties led to a 14 to 27 percent increase in occupant fatality risk. They projected that existing fuel economy standards result in 2,200 to 3,900 excess occupant fatalities for each model year.

Obviously, if fuel economy standards were dramatically tightened, these numbers would go up.

The Secretary of Transportation and the Administrator of the National Highway Traffic Safety Administration have both stated that this bill, if enacted, would create substantial traffic safety problems.

Let me quote from a letter that Transportation Secretary Samuel Skinner wrote to the Congress this spring:

Major downsizing of vehicles, such as the amendment would require, does have a noticeable adverse impact on the safety of occupants. Our statistical analyses have demonstrated that the market-driven downsizing of the 1970's had adverse safety effects. In my view, it would be a tragic mistake to enact legislation (despite ite noble intentions) that served to undermine this country's progress in highway safety.

And here is what NHTSA Administrator Jerry Ralph Curry had to say about CAFE standards and traffic safety earlier this year:

If an upward movement in CAFE numbers produces a significant reduction in vehicle size and weight—which seems inevitable—the safety consequences are not hard to predict. Injuries will be more severe; deaths will increase.

These statements are reinforced by the conclusion of the president of the Insurance Institute that the standards in S. 1224 could not be achieved without significant downsizing.

Here is how the Washington Post reported it:

Institute President Brian O'Neill said the [Institute's] report is not meant to defend gas-guzzling cars. "I'm as good an environmentalist as the next guy, but I believe that we have to look at the whole picture," O'Neill said. * * * O'Neill and his staff agreed that [new technologies] can help save gasoline, but he said those savings will not yield the 40 miles per gallon standard that many conservationists believe the auto industry can achieve by the year 2000. "Even with those technologies, to get that kind of mileage, your're talking about downsizing," O'Neill said.

We heard last week on the Senate floor that highway deaths have declined since 1975, while vehicle size has declined. But the causal connection isn't there. Many other critical steps were taken to increase highway safety in this period—mandatory seatbelt laws, 55 mile-per-speed limits, drunk driving campaigns.

The American Coalition for Traffic Safety estimates that State seatbelt laws and minimum drinking laws alone have saved 20,000 lives in recent years. These factors caused small car fatalities to decline, and they caused large car fatalities to decline. The differential between deaths in small and large cars during that period remained the same. That is the point.

Department of Transportation data indicates that in 1978, there were 17.01 occupant fatalities per 100,000 cars for the largest cars and 31.73 fatalities per 100,000—or roughly twice as many—for the smallest cars. By 1987, the fatalities for large cars had declined from 17.01 to 15.56, and the fatalities for small cars had declined from 31.73 to 28.81. There were still roughly twice as many traffic fatalities in the small cars.

All other things being equal, whether it is 1975 or 1990, twice as many people die in small cars than large cars. That cannot be disputed.

Finally, Senator BRYAN cited a letter from Mr. Duleep responding to the Insurance Institute study. This letter concludes that the Insurance Institute has underestimated the fuel efficiency improvements that can be made through technology alone.

Assume for a minute that the Insurance Institute has overestimated the amount of downsizing that would be required to meet the standards set in S. 1224. Duleep himself says that the only way we can meet these standards is through downsizing. The Insurance Institute says that downsizing will cost lives, and Duleep does not dispute that. There may be a dispute over how many but not over whether lives will be lost by downsizing.

Mr. President, we need to reduce our dependency on imported oil. We need to address the greenhouse effect. We need a national energy policy. I do not doubt that we can make reasonable increases in automobile fuel efficiency without excessive downsizing and without a significant increase in highway fatalities.

There are technologies available that should enable us to increase fuel efficiency levels by several miles per gallon over the next decade. There are areas in which the auto makers have opted for increased power and accel-

eration, when they could have chosen increased fuel economy instead. Improvements can be made.

But Mr. President, the experts agree that the standards in this bill are far too stringent to be met without significant, across-the-board reductions in the size and weight of new automobiles. And downsizing will lead to a significant increase in highway deaths. That is just not acceptable.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator's time has expired.

The Senator from Nevada is recognized for 2 minutes.

Mr. BRYAN. Thank you very much, Mr. President. I would not want my colleagues on the floor or those watching from their offices to conclude that silence is acquiescence. It is our view, after a very carefully considered series of hearings, that, indeed, the technology necessary to achieve the 20- percent fuel improvement by the year 1995 and the 40 percent by the year 2001 is fully supported by the record.

I look forward to extended discussion with my good friend, the distinguished Senator from Michigan, tomorrow during the course of our hour which has been set aside for debate where we will respond point by point to his contention with respect to the technology and, in our view, the proper interpretation of it and also to discuss any concerns which have been raised about issues of safety. We believe the evidence overwhelmingly supports that S. 1224 does not involve a compromise of safety, it does not involve downsizing, and that the two are completely compatible and harmonious each with the other and that there are a number of safety experts who will bear witness to that position.

I thank the Chair. I yield back my time.

Mr. HATCH. Mr. President, I would like to alert my colleagues to a problem associated with S. 1224 that I believe has been overlooked so far in this discussion. Much of the debate over S. 1224 has focused on the potential effects of more stringent fuel economy standards, the resulting downsizing and weight reduction efforts by automobile manufacturers, and the inevitable loss of lives through increased highway traffic fatalities. Studies released recently by the U.S. Department of Transportation and by the Insurance Institute for Highway Safety provide dramatic evidence that downsizing can have a significant adverse effect on occupant safety.

Somewhat overlooked in this debate is the even more far-reaching effect that S. 1224 could have on the development of safety technology, which would affect all drivers. Single and limited line manufacturers such as Volvo, BMW, and Mercedes-Benz have provided the development of safety technology which is standard on virtually every car sold in the United States today. Critical features such as 3-point seatbelts, airbags, antilock brakes, head restraints, and side-intrusion bars were first introduced on large, relatively expensive cars manufactured by these limited line manufacturers. These features not only add weight to an automobile, but they are relatively expensive to produce until economies of scale can be achieved, and they can be included on smaller, less-expensive automobiles.

The effect of S. 1224 would be to stifle this development of safety technology. Single and limited line manufacturers do not have small car fleets with which to average their larger cars. Even though their cars are no less fuel efficient than comparable cars produced by full-line manufacturers, they would be subject to much greater and even prohibitive penalties under the provisions of S. 1224. The resulting effect on safety development would be detrimental to all automobile owners, regardless of the size of the automobile which they prefer.

OLDER WORKERS BENEFIT PROTECTION ACT

The PRESIDING OFFICER. Under the previous order, the hour of 5:10 having arrived, the Senate now resumes consideration of S. 1511, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1511) to amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes.

The Senate resumed consideration of the bill.

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 1511.

AMENDMENT NO. 2759

Mr. METZENBAUM. Mr. President, I send to the desk an amendment in the nature of a substitute on behalf of myself and Senator HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mr. HATCH, Mr. PRYOR, Mr. HEINZ, and Mr. JEFFORDS, proposes an amendment numbered 2759.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. Finding.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio* v. *Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(1) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) in subsection (f), by striking paragraph (2) and inserting the following new paragraph:

"(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

"(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this Act.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any

civil enforcement proceeding brought under this Act; or";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(1) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payment that constitutes the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

"(A) paid to an individual that the individual voluntarily elects to receive; or

"(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 180 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) That maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or in part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicabe State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following a reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, it—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing inde-

pendent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFITS PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 (as redesignated by section 103(2) of this Act).

(e) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act if the intent of the modification is to evade the purposes of this Act.

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the reuqirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

"(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

The PRESIDING OFFICER. Under the previous order, the time between now and 7 p.m. is equally divided and controlled by the Senator from Utah [Mr. HATCH] and the Senator from Ohio [Mr. METZENBAUM].

The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that a statement in behalf of the managers with respect to the final substitute be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1511 FINAL SUBSTITUTE: STATEMENT OF MANAGERS

VOLUNTARINESS

1. The managers wish to make clear that it is the plaintiff's burden under the ADEA to demonstrate that his or her retirement was involuntary. Such a claim would be raised under section 4(a). Under the ADEA, an employer does not have to prove that an early retirement incentive plan is voluntary. Of course, no employee benefit plan—including an early retirement incentive plan—may require or permit the involuntary retirement of any individual.

2. The fifth sentence of the second full paragraph on page 27 of the Committee Report is expressly disavowed.

3. Because, by definition, early retirement incentive plans are made available exclusively to olders workers, relevant circumstances must be carefully examined to ensure that older workers make a voluntary decision. In order to determine whether a voluntary decision has been made, among the factors that may be relevent are (1) whether the employee had sufficient time to consider his or her options; (2) whether accurate and complete information has been provided regarding the benefits available under the early retirement incentive plan; and (3) whether there have been threats, intimidation and/or coercion. The employee retains the burden of proof regarding the issue of involuntariness.

4. Some observers have construed language in the Committee Report to mean that an early retirement incentive offer that was very generous, in other words, almost too good to refuse, might also be challenged on the basis of voluntariness. Nothing in these amendments should be construed to give rise to any challenge to an early retirement incentive plan on the basis that the attractiveness of the offer induces employees to retire. The attractiveness of an early retirement incentive does not call into question the voluntariness of an employee's decision to take advantage of that incentive.

EARLY RETIREMENT INCENTIVE PLANS

1. At the outset, we wish to explain the meaning of the provision requiring that certain early retirement incentive plans must be "consistent with the relevant purpose or purposes of the Act." This standard does not apply to early retirement incentive plans described in paragraph 4(1)(1). It also does not apply to such plans unless a prima facie case of age discrimination has been established under section 4(a).

Under new paragraph 4(f)(2)(B), an early retirement incentive plan must be consistent with the relevant purpose or purposes of

the ADEA. The phrase "purposes of the Act" has been used as a standard in the ADEA for over 20 years, and the common approach has been to consider only the purpose or purposes that are relevant to the issue at hand. We endorse that approach. An early retirement incentive plan need not be shown to be consistent with every purpose of the ADEA in order to be found lawful. That would be an impossible burden for an employer to meet. As a general matter, the purpose implicated in considering an early retirement incentive plan or any particular feature of such a plan is the purpose of prohibiting arbitrary age discrimination in employment.

Early retirement incentive plans that withhold benefits to older workers above a specific age while continuing to make them available to younger workers may conflict with the purpose of prohibiting arbitrary age discrimination in employment. The purpose of prohibiting arbitrary age discrimination in employment also is undermined by denying or reducing benefits to older workers based on age-related stereotypes. For example, it would be unlawful under this substitute to exclude older workers from an early retirement incentive plan based on stereotypical assumptions that "older workers would be retiring anyway."

2. It is also clear that a wide variety of voluntary early retirement incentive plans would be lawful under the ADEA. For example, early retirement incentives that provide a flat dollar amount (e.g., $20,000), service-based benefits (e.g., $1,000 multiplied by the number of years of service), or a percentage of salary to all employees above a certain age were permissible before the *Betts* decision and would remain lawful under this substitute. Similarly, early retirement incentives that provide flat dollar increases in pension benefits (e.g. $200 per month) or percentage increases (e.g. 20%), would continue to remain lawful. Finally, early retirement incentives that impute years of service and/or age would satisfy the ADEA. For example, a plan that gives employees who have attained age 55 and who retire during a specified window period credit for 5 additional years of service and/or age would be lawful.

We recognize that employees may welcome the opportunity to participate in such programs, and we do not intend to deprive employees of such opportunities or to deny employers the flexibility to offer such programs rather than resorting to involuntary layoffs.

BURDEN OF PROOF IN SECTION 4(f)

1. Under section 4(f)(2)(A), the substitute provides that the employer bears the burden of proving that a bona fide seniority system is not intended to evade the purposes of the ADEA. The managers wish to make clear that this burden of proof does not disturb or affect the allocation of burdens of proof for seniority systems under Title VII.

2. The substitute deletes any reference to paragraphs 4(f)(1) and (3) of the Age Discrimination in Employment Act (ADEA). The *Betts* decision did not involve interpretation of those two paragraphs. The two paragraphs are removed because they are unchanged by *Betts* or by this bill.

In particular, the managers declare that they are not disturbing or in any way affecting the allocation of the burden of proof for paragraph 4(f)(1) under pre-*Betts* law. Prior to *Betts*, courts had allocated the burden of proof under paragraph 4(f)(1). This bill overturns the Supreme Court's allocation of the burden of proof under paragraph 4(f)(2). Because the allocation of the burden of proof under paragraph 4(f)(1) was not at issue in *Betts*, the managers find no need to address it in this bill.

ACTUARIAL PRACTICES

The substitute incorporates the equal benefit equal cost rule into section 4(f)(2). We note that in complying with this provision, the employer may base necessary cost data on generally accepted actuarial principles, such as actuarial extrapolation, smoothing and averaging, and on the use of reasonable related data—*e.g.*, as to the effects of aging on disability incidence and costs. In all circumstances, the employer must base calculations on the best reasonably available data.

STATE ELECTION PROCEDURES

The substitute allows state and local governments to offer existing employees an election between existing and newly-created disability benefits. The decision whether to have an election procedure is at the discretion of the affected state or local government. It is the managers' intent that the election provided for under section 105(c) of the bill be a one-time election to be used in the context of complying with this bill. The managers intend that once an employee either elects or does not elect to be covered by the new disability benefits under section 105(c)(2), the employee may not change his or her decision. Thus, an employee will not be permitted to opt in and out of two plans. The flexibility that the substitute provides for state and local governments is negated if employees are given such discretion. An employer shall use an effective method of transmitting notice, such as the mailing of notice to an employee's last known address, or the inclusion of notice in the employee's paycheck.

WAIVERS AS A DEFENSE

The managers intend that in any dispute over whether the requirements, conditions and circumstances set forth in paragraph 7(f)(1)(A)–(H) or 7(f)(2)(A)–(B) have been met, the party asserting the validity of the waiver shall have the burden of proving in a court of competent jurisdiction as an affirmative defense that the waiver process satisfied each of the factors in that paragraph. With respect to the allocation of burdens of proof and production on the issue of whether a waiver was "knowing and voluntary," the managers do not intend to distrub the law as it existed prior to passage of this bill, including the law under Rule 12 and Rule 56 of the Federal Rules of Civil Procedure.

RETIREE HEALTH

Many employer-sponsored retiree medical plans provide medical coverage for retirees only until the retiree becomes eligible for Medicare. In many of these cases, where coverage is provided to retirees only until they attain Medicare eligibility, the value of the employer-provided retiree medical benefits exceeds the value of the retiree's Medicare benefits. Other employers provide medical coverage to retirees at a relatively high level until the retirees become eligible for Medicare and at a lower level thereafter. In many of these cases, the value of the medical benefits that the retiree receives before becoming eligible for Medicare exceeds the total value of the retiree's Medicare benefits and the medical benefits that the employer provides after the retiree attains Medicare eligibility. These practices are not prohibited by this substitute. Similarly, nothing in this substitute should be construed as authorizing a claim on behalf of a retiree on the basis that the actuarial value of employer-provided health benefits available to that retiree not yet eligible for Medicare is less than the actuarial value of the same benefits available to a younger retiree.

Mr. METZENBAUM. Mr. President, I rise to inform the Senate that the managers have reached agreement on a compromise substitute amendment. I am pleased that we have reached this agreement because we can now all work together to ensure that this bill becomes law this year. The negotiations were long, they were tedious, they were drawn out, they were difficult at times. I think it is fair to say that without the unbelievable tenacity, patience, and willingness of our respective staffs, this compromise would never have been reached.

So I want to say publicly how grateful I am to my own staff, as well as to the staff of Senator HATCH who have given so much of themselves. I will address myself further to that subject at a later point.

This agreement means that will be overwhelming bipartisan support for the effort to protect the civil rights of millions of older Americans. I intend to outline the contents of the agreed-upon compromise, but first I must pay tribute to those Senators who in addition to the staffs have worked so diligently to bring this matter to a close.

Senator HATCH has shown great courage and leadership as chief architect of the compromise. He is a tough, but fair negotiator. He demanded many concessions from us and argued strongly for his position. But he also shared our commitment to enact the a law this year to protect older workers. It was that shared commitment that drove us to reach consensus.

On the side of the aisle, Senator PRYOR, the chairman of the Aging Committee, was my stalwart partner. He never wavered in his belief that we could reach an agreement. His calm, steady leadership guided us through a number of difficult issues. He pushed us to remain steadfast to our ultimate goal: to get a fair law enacted to protect older workers.

On the other side of the aisle, Senators HEINZ and JEFFORDS played key roles. Senator HEINZ, the ranking member of the Aging Committee, was a great help in these negotiations. He combined substantive expertise on some of these very complex issues with the common sense necessary to arrive at mutually agreeable language. Senator JEFFORDS, my ranking counterpart on the Labor Subcommittee, has been struggling with this bill as long as I have. He has been a presistent voice of reason throughout this long process.

I am frank to say that this substitute amendment is far from perfect—it is a true compromise. The managers

were forced to make some very painful concessions. Advocates for older Americans may be disappointed because this agreement is not all that they wanted. Many lobbyists for the business community will be upset because they wanted no law at all. But in the end we can hold our heads high, because older Americans will be better off once this compromise becomes law.

Some may ask, why did the supporters of this bill agree to such a painful compromise? After all, in the only vote on this bill last week, some 80 Senators supported the Pryor-Metzenbaum approach against an amendment offered by Senator HATCH. We also have a time agreement to vote final passage on the bill, deal or no deal, by 7 o'clock this evening.

But the answer is simple: we want a law, not just a bill enacted by a very strong majority of the Senate. The best way to get a law at this late stage of the session is by consensus. Now that Senator HATCH is on our side, we will work together to ensure quick passage by the House and final approval by the President.

I am frank to say it was meaningful to me during the negotiations that Senator HATCH pledged that he would indeed call the leadership of the House committees working on this measure to prevail upon them to join with us andmove this legislation promptly. I knwo that Senator HATCH's intervention will help the process because in the late days of a session, a bill can bog down easily.

Let me review briefly what is in the compromise agreement. I ask unanimous consent that a more detailed summary of the agreement be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. METZENBAUM. The basis of this agreement is that the committee substitute amendment as modified that was put before the Senate last Monday. We have made a number of changes in that amendment to accommdate Senator HATCH's concerns.

First, we modified the long-term disability benefit offset provision. Under the compromise, we allow an employer to offset those disability benefits against pension benefits: First, when an employee voluntarily elects to receive pension benefits; or second, when an employee becomes eligible for an unreduced pension and has reached the greater of age 62 or normal retirement age, generally age 65.

Second, we have expanded the number of employers who are eligible to offset any plant shutdown sweeteners against normal severance pay. Under the committee modification, only employers who offered retiree health benefits were eligible to take advantage of this offset. The compromise eliminates the requirement that retiree health benefits are a necessary pre-condition for this offset.

Third, we adjust the standard for judging the legality of an early retirement incentive plan. The compromise recognizes that such a plan is legal if it is consistent with the "relevant purpose or purposes" of the adea.

Fourth, in the waiver section, we provide that the employers' burden is to demonstrate that a waiver meets the enumerated requirements in the bill. We also eliminate any reference to the burden of proof allocation for the affirmative defenses under section 4(f)(1), so as to make clear that the pre-Betts allocation remains unchanged.

Fifth, we extend the effective date for private employers, not subject to a collective-bargaining agreement, from 60 days to 180 days after the date of enactment. We also clarify the effective date as it relates to a stream of benefit payments made to an individual that began prior to the effective date. We exempt such a benefit stream from the requirements of the bill, provided that the employer has not initiated the stream pursuant to a modification made after the date of enactment, with the intent to evade the purposes of the bill.

Finally, at Senator HATCH's request, we have deleted coverage of Federal employees under the bill.

Each one of those changes is the product of hours of hard bargaining. This compromise is well below where I thought we should be. In fact, on the issues of disability and integration, it is worse than what our bottom line position was.

But one has to be a realist. Regrettably, the administration had vowed to veto the bill in its earlier versions. This compromise represents our best effort at the end of a session to deal with all remaining problems raised by those parties who are serious about this issue. Simply put, I believe this compromise is our only real chance for a law this year.

We now have overwhelming broad-based support for this bill. State Governments are now expressing their view that we have fairly accommodated their concerns. My own State of Ohio, which ignited this issue by its treatment of June Betts, is now satisfied with the bill. In a letter I received last week, the Ohio retirement study commission stated that the bill now "accommodates the major concerns of Ohio's public pension funds." The State of Maine also supports the bill. The State of Maine has called the bill, as modified, "a fair compromise in addressing both the concerns of older workers regarding their eligibility for disability benefits and the cost to public employers."

I ask unanimous consent that the letters from Ohio and Maine be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. METZENBAUM. In addition, a number of responsible business leaders have had the courage to support the bill publicly because they recognize that we have accommodated their legitimate concerns. For example, Western Union, in its letter of support indicated:

> We recognize the need for Congress to act to close the broad loophole created in ADEA in Betts. * * * We believe that this legislation, which is prospective only, addresses our concerns regarding retroactivity. Accordingly, we will support this legislation and we will take whatever steps are necessary to conform our benefit plans to this legislation should it become law.

There are other companies that feel the same way. For example, the Unum Corp., America's leading provider of group long-term disability insurance, has repeatedly stated its support for this bill. Unum has praised the objective standards set forth in the bill as valid, reasonable, and workable.

Both public and private sector unions also support this legislation. For example, the United Autoworkers made this statement about the Pryor-Metzenbaum committee substitute: "The UAW urges you to give this substitute your enthusiastic support."

But the support of corporations, States, and trade unions pales in comparison to the overwhelming support by millions of older Americans. They want justice; they demand fair treatment. They need this bill to protect them from irrational, arbitrary age discrimination.

Older workers saw what happened to June Betts, and they do not want it to happen again. She lost her right to disability retirement benefits—thousands of dollars in earned benefits—simply because of her age.

June Betts now lives in a nursing home. She is destitute. She suffered from Alzheimer's disease. She worked hard for her money, but she was robbed of her dignity by a system that punished her simply because she has the bad fortune to become disabled 1 year after the age 60 cutoff for benefits.

Older workers saw what happened to Harry Sousa, a rubberworker from Rhode Island, and they do not want it to happen again. He worked for his company for over 30 years. He was entitled to severance pay. But because Harry was an older worker eligible for a reduced pension, he was denied over $30,000 in severance pay that younger workers received.

It is wrong to punish a dedicated, loyal worker like Harry Sousa. It is outrageous to punish Harry Sousa simply because of his age.

Under this compromise, we will not tolerate such outrages against another June Betts or another Harry Sousa.

Older Americans will be able to rest a little easier assured in the knowledge that their employment benefits will be subject to the protections of the ADEA. That is why, despite all the pain involved, we can be proud of this compromise, because it restores basic civil rights protection for millions of older workers.

As we all know, this bill involves complex, highly technical issues.

Staffs on both sides of the aisle have been able to master these complexities, and they deserve great credit for moving this bill forward.

I want to pay special tribute to Sharon Prost, Senator HATCH's chief labor counsel, for her tireless effort on this bill. She went above and beyond the call of duty to hammer out a tough compromise. Steve Williams and Chris Jennings, with Senator PRYOR, were extraordinary in all phases of this process. Jeff Lewis and Janice Fiegener, with Senator HEINZ, played major roles in shaping this compromise. Reg Jones and Mark Powden, with Senator JEFFORDS, have worked with us in a constructive way from the very beginning of this process.

I would certainly be remiss if I did not mention the efforts of my own staff director on the Labor and Human Resources Committee, Jim Brudney, the fine work by labor counsels Al Cacozza and Michele Varnhager, and the contribution of able staff assistants Kelly Murphy and Pat Preston. But I have to pick on one in particular: Jim Brudney has given so much of himself. When he was supposed to be doing babysitting duties at home, he was babysitting the Betts bill. No matter what the hour of the day or night, he was working with Sharon Prost on Senator HATCH's staff. It was an unbelievable effort on his part, a sense of dedication you do not see often.

At an earlier point today when I felt that we had negotiated long enough and far enough and it was time to draw the line, I was the one who said, "Let just go in and say to Senator HATCH, 'This is it. Take it or leave it.' Jim Brudney said, 'No, that is not what we ought to do. We ought to try to work it out once more. Let us go far beyond a reasonable doubt and try to work it out.'"

There were a couple more items. In fact, that is what we did do, and we were able to work it out. He was right. I was wrong. And I think that the senior citizens of this country owe him a great debt of gratitude. I am pleased that I played a part in this, and all those involved have a right to be proud of their effort. Passage of this bill will make our society more just and fair.

I yield the floor.

EXHIBIT 1

SUMMARY OF PRYOR-HATCH-METZENBAUM-HEINZ AGREEMENT ON BETTS LEGISLATION

1. LONG-TERM DISABILITY

Change the bill to allow employers to offset long-term disability benefits against pension benefits when an employee elects to receive pension benefits; or, when an employee becomes eligible for an unreduced pension and has reached the greater of age 62 or normal retirement age.

2. INTEGRATION

On page 6, lines 7 and 8 of the substitute, following "(ii)" strike the words "in any case in which retiree health benefits as described in clause (i) are provided,". This allows to employers that do not offer retiree health an offset against severance of any shutdown sweeteners that make the employee eligible for an unreduced pension.

3. EARLY RETIREMENT INCENTIVES

Change the "consistent with the purposes of the Act" standard to "consistent with the relevant purpose or purposes of the Act."

4. CONTINUING STREAM OF BENEFITS (RETROACTIVITY)

Accept Hatch-Kassebaum language with the proviso that it does not apply to modifications to a benefits arrangement after the date of enactment that are made to evade the purposes of the bill.

5. BURDEN OF PROOF

With respect to waivers, change burden of proof section in the bill to state that employers have the burden of the specific requirements in this section.

Delete paragraphs 4(f) (1) and (3) from the bill. Employers have burden on 4(f)(2).

6. EFFECTIVE DATE

180 days rather than 60 for non-collectively bargained private employers.

7. STATE AND LOCAL CONCERNS

Change "establish" to "implement" on p. 11, line 17.

8. MISCELLANEOUS

Change the word "individual" in section 4(f)(2)(B) back to "worker."

9. FEDERAL SECTOR

Delete the coverage of Federal employees.

EXHIBIT 2

THE OHIO RETIREMENT
STUDY COMMISSION,
Columbus, OH, September 17, 1990.

Hon. HOWARD M. METZENBUAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR METZENBAUM: On behalf of the Ohio Retirement Study Commission, I am writing to thank you for your support of the bipartisan substitute of S. 1511 which accommodates the major concerns of Ohio's public pension funds.

I would also like to commend your staff for their patience and diligence in seeking an acceptable solution for all interested parties involved with this legislation. Our hats are off to them.

The Commission intends to recommend to the Ohio General Assembly as soon as possible all changes necessary to place Ohio pension law in compliance with the letter and spirit of the Older Workers Benefit Protection Act.

Sincerely,

ARISTOTLE HUTRAS,
Director.

MAINE STATE RETIREMENT SYSTEM,
Augusta, ME, September 17, 1990.

Re: Older Workers' Benefit Protection Act—Senate Bill 1511.

Senator GEORGE MITCHELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MITCHELL: I have had an opportunity to review the latest proposed revisions to Senate Bill 1511 which incorporate the transition language for state and local governments. As you may already know, the Maine State Retirement System originally proposed this transition language in order to minimize the financial impact on Maine's public employers if required to modify their existing disability programs to comply with the provisions of ADEA.

Overall, the bill appears to be a fair compromise in addressing both the concerns of older workers regarding their eligibility for disability benefits and the cost to their public employers.

I would also take this opportunity to extend my appreciation to Mr. Robert Corolla who worked diligently in addressing the concerns of the State of Maine regarding this legislation. Please feel free to contact me at any time if I can be of further assistance on this or any other matter affecting the State of Maine.

Yours truly,

CLAUDE R. PERRIER,
Executive Director.

Mr. HATCH. Mr. President, after having listened to my distinguished friend from Ohio, I am glad Mr. Brudney was there, too, because he told me to take it or leave it so many times that I almost left it.

In all honesty, the staffs on both sides in this issue have been just excellent. I want to pay tribute to them, because this is one of the most complex, difficult sets of issues that I have seen since I have been here. We see them on the Labor Committee. They are very, very difficult issues. Whenever you get into these benefit programs, they are complicated and expanded issues that are just horrendous sometimes to handle.

Mr. President, at the outset, I say that I appreciate the efforts made by the bill sponsors, Senators PRYOR, Senator METZENBAUM, my counterpart in the Labor Committee, Senator HEINZ and Senator JEFFORDS from the Labor Committee, as well. All four of them worked very hard on this bill. They are the prime sponsors of this bill.

Now we have a Metzenbaum-Hatch substitute that we hope will help to correct some of the issues and some of the problems with this bill.

To be truthful, this agreement may be a little like a hippopotamus. Right away some will say that it is big and it is ugly.

The proponents of S. 1511 will say this compromise does not go far enough in amending the Age Discrimination in Employment Act, and the opponents will say that it does not go far enough in correcting the problems in S. 1511.

In my own view, to the extent that this legislation still, despite our changes, will cause some reallocation of employee benefits, it is certainly not perfect. I would not be surprised if, after this bill is implemented, we begin hearing from workers whose benefits are affected.

Let us all be very honest with our constituents. Let us be honest with both current and retired workers. We identified some major problems with S. 1511 that we have addressed in this compromise, but I will be frank to admit that I do not know if we identified them all.

This legislation is so complex, and the administration of employee benefit arrangements is so esoteric, that it is quite possible that I or the sponsors and advocates of this legislation have inadvertently overlooked some of its pitfalls. I would not be surprised if we are back on the floor of the Senate in 2 or 3 years' time debating amendments to this very bill.

The fact that we are not imposing requirements on the private sector, as well as the State and local government that we do not impose on the Federal Government, is still very bothersome to me. We cannot remedy this double standard without imposing one-half billion dollars' worth of costs on Federal taxpayers and without sacrificing the bill altogether. I am sure that the majority of the Senate would not support the latter option.

While a substantial majority of this body voted for the Pryor amendment to cover Federal workers under the bill, it may be the better part of valor to retain the exemption for the Federal Government and save the taxpayers the expense of compliance. I base this option on the old adage that "two wrongs don't make a right."

Given the substantial bipartisan interests in correcting the Supreme Court's decision in Betts, interest that was expressed by those on our side of the aisle a long time ago, I am glad to be moving forward on this compromise legislation. On balance, I believe it is a good compromise, and I urge my colleagues to adopt it.

Last week I circulated a "Dear Colleague" letter outlining my major concerns with S. 1511. These concerns extended to the version 5 of S. 1511. I believe that the change made by this compromise address these concerns. I want to take a few minutes to describe them for my colleagues.

One of my principal concerns with the bill and the subsequent versions was the adverse effect it would have on voluntary early retirement programs.

Version 5 of the Pryor legislation would have required many retirement incentive plans to conform to all purposes of the Age Discrimination in Employment Act. This is clearly an impossible task for any employer to meet. Employers who will most likely respond to this change by eliminating early retirement incentive programs that many older workers find very attractive.

The compromise we have agreed on clarifies the statute such that an early retirement incentive program must meet only "the relevant purpose or purposes" of ADEA. There is no intent on either side of the aisle to sanction arbitrary age discrimination; but, neither do we want to subject voluntary early retirement programs to unnecessary litigation.

The change in statute we have agreed upon makes our intent clear: only the relevant purpose or purposes of ADEA have to be applied to early retirement incentive programs in determining their lawfulness. And, generally, the purpose of prohibiting arbitrary age discrimination is the relevant purpose under the act.

This change provides protection for legitimate early retirement incentive plans. This is a significant improvement over the language in the pending bill. Protecting early retirement incentive plans inures to the benefit of older workers who may, someday, want to take advantage of such plans.

Further, the floor manager's statement sets forth our detailed views on many critical aspects of early retirement incentive programs. We have tried to provide guidance in this area which I hope preserves the employer's ability and incentive to offer such programs. At the same time, we have tried to protect employees who are, in fact, coerced into participating in such programs, or unlawfully excluded from participating, on the basis of age.

Second, version 5 of S. 1511 would have required the restructuring and possible cutbacks in disability benefits. It would have required duplicate payments for certain groups of employees, forcing significant restructuring of large numbers of disability plans now provided by employers and a decrease in the level of disability benefits for large numbers of employees.

The distinctions between the legal and the illegal uses of integration under S. 1511 had little relationship to the purposes of the Age Discrimination in Employment Act. In fact, these provisions would have resulted in mandated types and levels of benefits for certain employees and the concomitant reallocation of other employee benefits.

The compromise permits the complete integration of disability and pension benefits after an employee's normal retirement age, defined as ages 62 to 65, whichever is later.

The compromise also permits the integration on pension sweeteners without strings attached. Version 5 of S. 1511 would have allowed the integration of such sweeteners only if an employer also provided a specific package of retiree health benefits.

Third, while the sponsors of S. 1511 made changes in the provisions related to retroactivity, it still appeared that all the new requirements would be applied to ongoing benefit payments that began before the bill's effective date. Conceivably, all ongoing payments for disability, severance, and even retirement benefits could have been challenged.

In my opinion, it was critical to amend the bill to remove the possibility that current recipients of these various benefits could suffer disruptions in their payments.

The compromise provides that ongoing benefit payments to individuals that began prior to the effective date of the bill will not be affected by this legislation.

Version 5 of S. 1511 included a provision permitting State and local governments to offer employees the option of staying under their current disability plan or of enrolling in a new plan that conforms to the provisions of this new legislation.

While I have lingering concerns about the extent in which this procedure will mitigate the costs of compliance for State and local governments, I believe that, on balance, the bill's proponents have made a sincere effort to address these legitimate concerns.

This compromise goes a step further. The statement of managers clarifies the procedures of this election process. Such clarification will help State and local governments avoid litigation in the implementation of this act.

This compromise also makes additional, and I believe significant, changes with regard to the allocation of burdens of proof relevant to various matters arising under this bill.

First, certain sections which already appear in the ADEA have been deleted from the bill. Current law will continue to apply with respect to these provisions.

Second, we have made absolutely clear that it is an employee's and not an employer's burden to prove that he or she was involuntarily retired. Without this change, I believe that employers would have had a serious disincentive to offer early retirement incentive programs.

Many employers continue health benefits for persons who retire before they are eligible for Medicare and/or continue certain benefits that are supplemental to Medicare.

This is a positive practice which helps provide important protections for retirees.

This compromise ensures that the bill will not interfere with these important benefits that are vital to retirees of all ages.

Finally, we have made other modifications in the waiver title regarding

the burden of proof on questions of "knowing and voluntariness."

In general, I think that the modifications are important and achieve a proper balance with respect to the rights and obligations of the parties involved in litigation under this act.

Finally, the compromise extends the effective date from 60 to 180 days after enactment for all private nonunion employers.

This change is essential to giving the affected parties sufficient time to implement the changes that will be required. Sixty days was simply unrealistic.

My principal goal, Mr. President, is to protect older workers' right to fair and equitable benefits under the Age Discrimination in Employment Act, that is, to overturn the Betts decision, without disrupting the variety of employer-sponsored policies that benefit all workers.

It has been our policy to encourage employers to provide generous employee benefits. Clearly, this objective is frustrated, if not defeated, if Congress enacts legislation that so heavily encumbers American companies that they must reduce or eliminate such benefits.

Today, in the absence of this measure and other legislative proposals for employer-paid benefits, almost 40 percent of the employment dollar is designated for employee benefits. The employment cost index for benefit packages increased 7.2 percent during the 12 months between March 1989 and March 1990.

We must be concerned about the impact on all employees of additional Federal requirements that unnecessarily complicate existing arrangements or that will shift a firm's resources from actual benefits into regulatory compliance or litigation.

If an employer is forced to reduce or eliminate benefits for some workers to avoid litigation exposure or to avoid going afoul of the law, we have to ask the question: Is it worth it?

Of course, to help protect Americans from arbitrary discrimination, the answer, in my view, is yes. But, we must be careful not to cross the line between the legitimate protection of workers' legal rights and overregulation that is detrimental to their economic benefits.

I believe the compromise that is before us enables every Senator to vote in favor of overturning the Betts decision without causing the massive disruption in benefit plans that surely would have resulted under version 5 of the Pryor-Metzenbaum bill.

I urge my colleagues on both sides of the aisle to support it.

I also say again all of these Senators have played very important roles on this bill. Senator METZENBAUM certainly has worked long and hard on this, as has Senator PRYOR. They and their respective staffs have been terrific in trying to work out the problems on this bill.

Senator HEINZ has worked day in and day out and has had such perseverance in trying to pull all of the parties together and he deserves a lot of credit.

Senator JEFFORDS is an expert in these areas. He is probably the single person on the Labor and Human Resources Committee that really works on these areas the way he should, and he has played a very noble and a very important role in helping to bring about this result.

All of the respective staff members—I will enter their names into the RECORD—have done a terrific job.

With regard to Senator METZENBAUM, Jim Brudny, has helped the effort; Al Cacozza and Michele Varnhagen.

Senator PRYOR: Chris Jennings and Steve Williams.

Senator HEINZ: Jeff Lewis and Janice Fiegener.

Senator KASSEBAUM: Ted Verhaggen.

Of course, on my own staff, Sharon Prost has done a terrific job. What a labor counsel she is. I could not be more proud of her. For someone who just had a baby and is entitled to take her parental leave under our office policy, she came in and worked day in and day out, weekends and everything else, after having this beautiful baby. I tell her how much I personally appreciate it and how much our prayers are with her that her health will continue to remain good.

Kris Iverson, the minority counsel to the Labor Committee, has done a good job, as has Michael Benson and Greg Engeman.

All these folks have.

We also had a number of staffers from the Congressional Research Service, Kathy Schwindeman, Carolyn Mertz, and Ray Schmit.

From Senator JEFFORDS' office, Vicki Caldeira, and Reg Jones.

Last but not least I want to pay tribute to Jim McMillan, who has done a terrific job working with us on this matter, and I certainly did not mean to put him last because he played a very important and noble role.

Mr. President, I am proud of the Senators who worked on this and proud to have been able to work with the fellow Senator to try to fashion a compromise, a compromise I think most every Senator can vote on for this bill and feel reasonably confident we have done a pretty good job under the circumstances in trying to overrule the Betts decision while still upholding the better parts of the law.

So with that, I just want to thank everybody and recommend that all of our colleagues vote for this bill. I reserve the remainder of my time.

Mr. METZENBAUM. Mr. President, I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. I thank the Chair, and I thank the Senator from Ohio.

Mr. President, I rise today to express my support for S. 1511, the Older Workers Benefit Protection Act. This legislation would reverse the recent U.S. Supreme Court decision in Public Employees Retirement System versus Betts by reinstating the protection against arbitrary discrimination based upon age that was relied upon by older workers for over 20 years leading up to this decision.

In the Betts decision, the Court held that the Age Discrimination in Employment Act did not cover June Betts' benefits, despite the fact that the legislative history of ADEA clearly demonstrates that Congress intended such benefits to be covered. I believe this decision was wrong, Mr. President, and proves that even the present makeup of the Supreme Court is no guarantee that the judiciary will avoid legislating from the bench.

The purpose of S. 1511 is very simple: To make clear that older workers cannot be subjected to arbitrary age discrimination in benefits, and to reinforce the regulations that governed this area of the law prior to the Betts decision.

At the very heart of this bill is the codification of the regulation which requires that employers either provide equal benefits regardless of age, or cost-justify any age-based distinctions.

This equal benefit or equal cost rule is a good common sense rule that worked well for over 20 years. It protects older workers from arbitrary discrimination, while allowing employers to make cost-based distinctions. Despite claims to the contrary now being raised in opposition to this bill, most employers were in compliance with and supported that rule for the past two decades.

Protecting older workers from discrimination in all aspects of employment is simple fairness. And one of the reasons that I am here today to support this bill and the compromise that has been made is that simple fairness is an uncompromising goal that I intend to follow as the new chairman of the Senate Labor Committee's Subcommittee on Aging.

It is good public policy. It is good public policy for our Nation, because we are going to need the skills and experience of our older work force more and more. We should not allow them to be forced out by policies that either overly discriminate against them because of age or other factors connected with age.

Older workers need this protection. I strongly urge my colleagues to support this legislation.

I compliment the Senator from Ohio [Mr. METZENBAUM], the Senator from Utah [Mr. HATCH], and the Senator from Arkansas [Mr. PRYOR], especially, for their long work and for the things that they have done in pursuing getting this matter on the floor and compromised so that it could be passed.

This bill now enjoys bipartisan support. I look forward to working with these Senators and others on the principle of simple fairness that we will not have discrimination against our citizens because of age.

I thank the managers of the bill for this time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 10 minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, I thank the Senator from Utah for yielding. I shall not take all the 10 minutes.

Mr. President, I want to ask my colleague from Ohio a question: Under our substitute, section 1(1) provides that it shall not be unlawful age discrimination for a pension plan to discontinue the payment of Social Security supplements upon the pensioner's attaining eligibility for Social Security old age insurance benefits. As I understand it, this reference to old age benefits is not intended to imply that it would be unlawful age discrimination for a pension plan to discontinue Social Security disability supplements upon the pensioner's attainment of eligibility for Social Security disability benefits.

Mr. METZENBAUM. That is correct. Many pension plans offer retirement to certain participants suffering disability or permanent incapacity. Because Social Security disability benefits do not begin until completion of a waiting period, some pension plans offer, in addition to a basic disability pension benefit, a disability supplement intended to take the place of Social Security disability insurance benefits. However, as I understand it, such pension plans not infrequently discontinue payment of the disability pension supplement upon the participant's attaining eligibility for Social Security disability insurance benefits. Throughout the extended deliberations over the bill, there has been no suggestion that the receipt of Social Security disability benefits—for which there is no minimum age requirement—is so related to age as to be tantamount to an age-related disqualification.

Mr. HEINZ. I thank the Senator from Ohio for that clarification.

Mr. President, I commend the chairman and the ranking member on the Committee on Labor and Human Resources for what I know from personal experience has been an enormous labor, not only on behalf of the public interest that Senator HATCH and Senator METZENBAUM serve, but it is an enormous service to the Senate.

Correcting a Supreme Court decision, as many of us learned during the consideration of the Civil Rights Restoration Act, the CRRA, is incredibly complicated. It is full of uncountable pitfalls. It engenders the maximum amount of disagreement. Without the kind of determination and fortitude to work out a solution, it can embroil the entire Senate for not just hours, not just days, but sometimes weeks on the Senate floor.

Here we are. September is closing out fast, with only a few days of legislative session in October, maybe 10, if we are lucky. There is not much time to get the work of the Senate done. And, thanks to the perseverance of Senator METZENBAUM, the chairman of this subcommittee, and Senator HATCH, we have arrived at this occasion where the work of the Senate has been expedited enormously by their determination and good will.

It is a fact, Mr. President, that for over 12 months now, we have been sitting on this legislation that would overturn the U.S. Supreme Court decision in what was known and is known as the Public Employees Retirement System of Ohio versus Betts.

Congressional inattention up until now has resulted in thousands of workers being denied their rights to employee benefits in the workplace.

Each day that we have postponed floor debate, each day that we have delayed on compromising our differences and fashioning a thoughtful solution, we placed, whether we wanted to or not, more and more older workers in jeopardy of inequitable treatment simply by reason of the number of candles on their birthday cakes.

The intent of the legislation being discussed today, namely the Older Workers Benefit Protection Act, like that of my own legislation which I introduced earlier in this Congress, S. 1293, is to keep the Age Discrimination and Employment Act, the ADEA, on target and true to its intent.

When we enacted the ADEA over two decades ago, one of the primary purposes was to "prohibit age discrimination in employment," just as earlier civil rights legislation rejected such treatment based on race or sex or disability or political leaning. We wanted to close the door that led to discrimination based on age.

Yet, despite what we in Congress saw as a clear intent to ensure equitable treatment for older workers in the workplace, these rights were threatened by that June 1989 Supreme Court decision, the Betts decision, which ruled that employee benefit plans were not protected by the Age Discrimination in Employment Act.

Undermining more than 20 years of protection under the ADEA, and, I might add, the Department of Labor and Equal Employment Opportunity Commission [EEOC] regulations, this one Supreme Court ruling opened the door wide for potential discrimination in older workers' health, disability, life insurance, and severance benefits. It did so, in effect, by threatening or permitting the use of deferred compensation in the form of pension benefits to be converted to an unintended and counterproductive use.

The Supreme Court decision sanctions discrimination in benefits solely on the basis of a worker's age, without regard to who the worker is or what he contributes to the work force. It was a decision that was not in the larger national interest.

The disincentives to remain employed, which constitute the heart of the Betts decision, will, if uncorrected as we seek to correct them here today, have the practical effect of premature exits from offices and assembly lines by some of America's most valued employees. Although more subtle than mandatory retirement, discrimination of employee benefits can, and it does, coerce workers into early resignation and retirement.

Mr. President, my concern was that, during the months of negotiations on this legislation as we inched our way down the twisted path of compromise, we not lose sight of our original goal, and, specifically, that our primary purpose with this, or any so-called Betts legislation, was to protect the rights of older workers against unfair discrimination.

Historically, we in Congress have a tradition of speaking loudly and with conviction against any policy, be it shaped in the courtroom or in this Chamber, that fosters age discrimination. I ask that we speak again with equal force today. By passing legislation to overturn the Betts decision, Congress sends a clear message that it will reject all barriers to older workers' full and equitable participation in the workplace.

As the biological clock advances on this Nation's work force, the pool of younger workers will shrink. The Supreme Court's decision takes us in a direction that fails to recognize the implication of these demographics. We must take steps now to eliminate policies which discriminate against older workers and, instead, develop strategies that will assist businesses to encourage more workers to remain in the workplace, to remain productive, to be a national asset, and to help us move this country ahead.

I am very pleased that a bipartisan compromise has been reached. This process of reaching a compromise has been long and it certainly has been cumbersome. But the proposal before us today demonstrates a willingness on both sides to underscore that the Supreme Court erred—it made a mistake and it was wrong in its decision on Betts.

I wish to thank, as I have, not only Senator HATCH, Senator METZENBAUM, and Senator PRYOR, for their tremendous work on this, but our staff for their tireless work. I want to single out James Brudney, Sharon Prost, Steve Williams, and Chris Jennings for special thanks, and, I also want to thank Senator JEFFORDS and, his staff, Reg Jones and Vicki Caldeira.

But I want to save the best for last. I want to thank some of my staff. First, Jeffrey Lewis, the Republican staff director on our Special Committee on Aging, and Janice Fiegener, who is our senior professional staff member on issues of this kind, also on the Aging Committee. They have been superb. I know as recently as yesterday they spent most of their Sunday working, trying to get this compromise put together. To them I give my heartfelt thanks. I also want to take this opportunity to tell my colleagues that in a few days, Janice Fiegener will be an alumna of the Aging Committee. She will be leaving Washington, DC, to go out to the great State of Oregon to join her husband.

For those Senators who may not remember, Janice Fiegener is one of the Senate's experts on Social Security and other pension related issues. I do not think we will soon forget her help and efforts on behalf of the disabled and the elderly of this country, particularly those in Pennsylvania. She has helped ensure in so many ways that they get the kind of due process rights and benefits to which they are entitled, including the administration of a Social Security program that is conducted in a manner recognizing that every recipient is entitled to humane and equitable treatment.

Mr. President, there are, as I say, many others we could thank. I am delighted once again to have had this opportunity, as I have had on so many occasions, to work with the Senator from Arkansas [Mr. PRYOR] who brings such fine leadership to the committee I was privileged to chair for 6 years, the Senate Committee on Aging. Senator PRYOR has done an outstanding job on this legislation. He has been steadfast. He has been thoughtful. He has been creative. And, most of all, he has been determined to get a result that the Senate can be proud of. I think that result is before us, and I urge my colleagues to support it wholeheartedly.

I yield the remainder of my time.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, may I inquire of the Chair as to the situation regarding time on the measure?

The PRESIDING OFFICER. Time is controlled by the Senator from Ohio and the Senator from Utah. The Senator from Ohio has 32 minutes remaining.

If the Senator will suspend for just a moment?

The Chair will rule, by prior arrangement, the Senator from Ohio has yielded time to the Senator from Arkansas.

The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me. In a few moments, I am going to touch on a few of the issues with regard to the so-called Betts bill where final compromises have been reached.

Before I do that, let me take this opportunity to publicly thank my colleague from Utah, Senator HATCH. Senator HATCH, during these negotiations, I must say, has lived up to his reputation. He has been extremely tough; he has been a hard negotiator. He has fought very, very hard for his specific positions and philosophies to remain intact in this legislation. In every way, in every step, we have attempted to accommodate Senator HATCH and his original concerns. I must say, Mr. President, for those who have supported, for a long time, the override of the Betts decision, some may have thought that we gave a little too much. Senator HATCH probably thinks he gave a little too much. But truly, we think this is the best of the legislative process in that we have reached a compromise on a very constructive bill, a far-reaching bill that will satisfy those who do not in any way want to see a continuing age discrimination pattern in this country.

So I want to thank Senator HATCH, my colleague, and his very capable staff—most particularly Sharon Prost.

Mr. President, next I would like to thank Senator METZENBAUM, of Ohio, and his very knowledgeable and determined staff, in particular Jim Brudney. I must say, Mr. President, during these days and weeks of negotiation, I have felt myself being sort of the middle man between these two extremely knowledgeable and forceful legislators in attempting to make certain that they did not each, or respectively, give too much from their respective positions or philosophies in the bill. I can report, Mr. President, that both Senator METZENBAUM and Senator HATCH have in every way performed their legislative duties in a courteous and efficient fashion. I must say—and I share the thoughts expressed a few moments ago by the Senator from Ohio—there were times when I, too, felt: Let us stop all this negotiation, let us go to the floor, let us have a vote up or down, let us settle this matter; it has been before the Senate since August of 1989.

But I say, Mr. President, and I say this in all respect to my friend from Ohio and with respect to my friend from Utah, when the Senators might say, "Let us just go to the floor and duke it out, have a big battle, see who wins," once again our staffs sort of brought this into perspective.

They let us cool down a little bit; let us allow a few hours to take place. So each of the Senators decided to see if we could work out a compromise. As a result, staff worked further into the night, into the weekends. I want to compliment not only the staff members but also the two principals in this matter: the Senator from Ohio [Mr. METZENBAUM] and the Senator from Utah [Mr. HATCH].

As we know, Mr. President, Senator METZENBAUM ably represents June Betts. It was the June Betts case that brought this matter to the U.S. Senate this evening. Without the perseverance of Senator METZENBAUM and others, I do not know that we would have ever reached this point. To Senator HEINZ, the ranking member of the Special Committee on Aging—and his staff of Jeff Lewis and Janis Fiegener, Senator JEFFORDS—and Reg Jones of his staff, and those other individual Senators and their staffs who have played a key role in developing, in evolving over a period of a year, and 2 months, this legislation, I would like to say on behalf of all of us how much we appreciate their dedication to this cause.

Mr. President, I would be remiss if I did not single out from my aging committee staff, a young man who has been in Washington for about 3 years, Steve Williams. Steve Williams has lived with the Betts case for a period of a year and 2 months. I do not think a day has gone by during this past year and 2 months where he has not consulted me about the progress or, better, the lack of progress on the Betts bill in getting it to this point. So, Mr. President, I would like to thank very much Steve Williams, who has really dedicated a year of his life, even though he being a young man, dedicated a year of his life to making certain that the elderly were not discriminated against in the workplace.

To Chris Jennings, the deputy director of the Committee on Aging in the Senate, who has spent nights and days and weekends in working through the nuances and the forces of this legislation, pro and con, I would say that he, along with Steve and all of the members of the staff involved, have done a job that could not be short of being labeled absolutely splendid.

Mr. President, there is another player in this area that I must recognize at this point, and that is the majority leader. Senator MITCHELL of Maine has stated he wanted this to be a high priority, not of the Democratic Senate, but of this Senate that represents the entirety of this country. He has stated on several occasions that any message or any policy that implied age discrimination against the elderly worker in the workplace would not be permitted on his watch.

The majority leader has allocated a lot of time for this bill to be brought before the Senate. He has set aside, Mr. President, other mattters of great import to this country and to our Government in order to bring this particular case to the U.S. Senate in a timely fashion, and he has allocated the proper amount of time for us to allow these negotiations and a final vote on the Betts bill to go forward.

The majority leader, at all stages, knew the importance of this particular bill to the elderly workers. So, Mr. President, on behalf of all of us who have been a part of the long, laborious negotiations, discussions on this bill, I would like to extend my personal thanks to the Senate majority leader, Senator MITCHELL.

Mr. President, we will vote in about 45 minutes on the Betts bill I would like to once again thank those who have been a part of reaching this moment.

Over the past several months, a number of things have been said about the Betts bill. Opponents have said that it is so complicated that no one understands it. They have said that it outlaws legitimate business practices. They have said that it takes away from employers the flexibility that they need to structure employee benefit plans that are fair to everyone, regardless of age. They have also said that it will send every State in the union to the brink of financial ruin. I want to take a few moments if I might, to address these charges leveled at certain sections of the bill.

It is my understanding that there were five major concerns with the early version of the bill. One was the early retirement incentive plans; two, denying severance pay to pension eligible workers; three, disability; four, retroactivity and; five, how the States might be able to comply with the mandates issued by the U.S. Congress. Early retirement incentives, Mr. President, was certainly one area that was of early concern. Some charged that the bill jeopardizes all early retirement incentive programs. We want to make it clear that none of the sponsors of this legislation are against the use of exit incentives. We believe they are a very humane way of achieving necessary work force reductions. We also believe that they can be structured in abusive ways which impact adversely on older workers.

The bill that we will be voting on grants a safe harbor for the two most common forms of exit incentives: Pension subsidies and Social Security bridge payments. According to the General Accounting Office, as many as two-thirds of the early retirement incentives offered by employers take one of these two forms.

Mr. President, I would like to make certain my colleagues heard and understood just exactly what I said. This bill now immunizes from challenge two-thirds of the early retirement incentive programs offered by employers today. And the charge, once again, is that the Betts bill jeopardizes all exit incentives. We feel that we have addressed that issue.

What does the compromise amendment do to those early retirement incentive programs that do not fall under the safe harbor clause? It requires only that they be "consistent with the relevant purpose or purposes of the act."

I must say, Mr. President, this was a section that during the negotiating process was extremely complex, but it was a part of this legislation that was very, very critical. Once again, the charge that the bill jeopardizes all early retirement incentive programs is one that we feel we have dealt with.

Pension severance integration: Mr. President, another charge against the early version of the Betts bill was that by not allowing employers to deny severance pay to pension eligible employees, it takes away the flexibility that is essential. Mr. President, employers never had this flexibility in the first place. Prior to the Betts decision, there was very little doubt that the practice of denying severance pay to pension eligible employees violated the ADEA. Under both the Reagan and the Bush administration, the EEOC has sued employers over this very practice and won almost every single case. The same has been true with private suits. For reasons that will be outlined during the remainder of this discussion, we sponsors feel very strongly about staying with pre-Betts law on this issue. But in the compromise, we have attempted and made a good faith effort to work out this problem to allow employers some flexibility in the area by allowing them to offset retiree health benefits and shutdown-related-pension subsidies.

To summarize, Mr. President, this bill does not take away any flexibility from employers that they had prior to the Betts decision. In fact, the bill itself, as well as the compromise we are voting on today, significantly expands that flexibility.

Disability pension integration was an issue raised by many in the early stages of this legislation and its development. On the issue of long-term disability, the charge against this bill has been that it will require the employer to pay the employee disability and pension benefits at the same time. Since an employee who is on disability is considered to still be actively working, it makes sense that an employer should not be forced to duplicate disability and pension benefits. The compromise, Mr. President, allows complete integration of disability with pension benefits. The employer may offset against disability; first, any pension benefit that the employee has voluntarily elected to receive, and second, any pension benefit for which an employee who is at least age 62 or normal retirement age, whichever is greater, is eligible to receive. This effectively eliminates any duplicate payments.

Mr. President, one of the major concerns in the early stages of the Betts bill was the issue of retroactivity—making this legislation apply retroactively. In fact, this concern was so great that this became one of the sticking points in our negotiation. We compromised on language, Mr. President, that specifically addresses this concern. It leaves no doubt that this legislation applies only in a prospective manner.

Finally, Mr. President, the States. Much has been said about how this bill is going to affect the States. We must keep in mind that this bill got to the Senate because a State—in this instance, the State of Ohio—discriminated against June Betts when she was the age of 61 and an employee for the State of Ohio. In fact, she was a teacher, and she was a very good one. But the early stages of Alzheimer's disease made it necessary that June Betts retire.

Mr. President, the protections of this legislation must be extended to public as well as private employees. There will be some cost to States, but we have made every effort to minimize that cost by allowing a 2-year delayed effective date. They have also been given a cost-saving election option.

I believe that this legislation is fair to the States. In a recent letter to Senator MITCHELL, the majority leader, the executive director of the Main State retirement system said, "The bill appears to be a fair compromise in addressing both the concerns of older workers regarding their eligibility for disability benefits and the cost to their public employees."

Mr. President, once again we have reached a momentous time. We are about to vote on the Betts bill, and it has been a bill that has been long developed. We truly believe that there has been a good-faith effort on both sides of the aisle and from all political persuasions. This compromise is a constructive one. We hope that it will be

supported by our colleagues. In fact, Mr. President, we would love to receive a unanimous vote.

Mr. President, I ask unanimous consent that a very short summary of the compromise amendment that we will be voting on momentarily be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF PRYOR-HATCH-METZENBAUM-HEINZ AGREEMENT OF BETTS LEGISLATION

1. LONG-TERM DISABILITY

Change the bill to allow employers to offset long-term disability benefits against pension benefits when an employee elects to receive pension benefits; or, when an employee becomes eligible for an unreduced pension and has reached the greater of age 62 or normal retirement age.

2. INTEGRATION

On page 6, lines 7 and 8 of the substitute, following "(ii)" strike the words "in any case in which retiree health benefits as described in clause (i) are provided,". This allows to employers that do not offer retiree health an offset against severance of any shutdown sweetners that make the employee eligible for an unreduced pension.

3. EARLY RETIREMENT INCENTIVES

Change the "consistent with the purposes of the Act" standard to "consistent with the relevant purpose or purposes of the Act."

4. CONTINUING STREAM OF BENEFITS (RETROACTIVITY)

Accept Hatch-Kassebaum language with the proviso that it does not apply to modifications to a benefits arrangement after the date of enactment that are made to evade the purposes of the bill.

5. BURDEN OF PROOF

With respect to waivers, change burden of proof section in the bill to state that employers have the burden on the specific requirements in this section.

Delete paragraphs 4(f) (1) and (3) from the bill. Employers have burden on 4(f)(2).

6. EFFECTIVE DATE

180 days rather than 60 for non-collectively bargained private employers.

7. STATE AND LOCAL CONCERNS

Change "establish" to "implement" on p. 11, line 17.

8. MISCELLANEOUS

Change the word "individual" in section 4(f)(2)(B) back to worker.

9. FEDERAL SECTOR

Delete the coverage of federal employees.

ACCOMMODATION OF STATES THROUGH TRANSITION PROVISION

Mr. MITCHELL. Mr. President, I am pleased to support this legislation. I commend Senator PRYOR, chairman of the Special Committee on Aging, and Senator METZENBAUM, chairman of the Labor Subcommittee, for their leadership on the issue.

I also wish to note that Senator COHEN, the senior Senator from Maine, is an original cosponsor of the bill, and provided early leadership in organizing bipartisan support for the measure. S. 1511 also is supported by the American Association of Retired Persons and by the Maine State Employees Association, which is affiliated with the Service Employees International Union.

This legislation is necessary and reasonable. It restores and clarifies the original purposes of the Age Discrimination in Employment Act [ADEA] of 1967, so as to eliminate arbitrary age discrimination in employee benefit plans. It overturns the Supreme Court's 1989 decision in Public Employees Retirement System of Ohio versus Betts, and should resolve, once and for all, any ambiguity or confusion that has accompanied some ADEA interpretations in recent years. With the exception of certain limited safe harbor provisions now provided in the substitute amendment, age-based differences among employee benefits must be justified by age-based differences in cost; for example, through an equal benefit or equal cost principle.

The legislation will require adjustment of employee benefit plans—including those of some States for State employees. However, the inconvenience of the need for adjustments is not a reason that can justify opposition to the legislation. Arbitrary, unfair age discrimination cannot be justified. That is the simple, basic premise for this legislation.

At the same time, I understand the concerns of the States which will need to make adjustments in State employee benefit plans in order to comply with the requirements of this bill. The State of Maine is one of those States, and I have worked with the Maine State Retirement System [MSRS] to mitigate any financial impact of the legislation. In May 1990, Mr. Claude Perrier, the MSRS director, proposed a transition provision, which has been included in the legislation. The provision accommodates legitimate State needs, but without undermining the basic premise of the legislation.

Like some other States, Maine State law currently denies disability benefits for any State employees who work beyond the age of 60. The State law was adopted long before the ADEA was enacted, and in some respects may have served as a rough rule of thumb in the State's apportionment of benefits. I do not believe there necessarily is any deliberate discriminatory intent in such age 60 rules; however, the effect is more than a just rough rule of thumb. The actual impact is a discrimination and disincentive for older workers continuing to work beyond age 60.

Under the legislation, States will need to remove such restrictions on disability benefits. They will need to adjust State employee benefit plans simply to comply with Federal law. The legislation does not preempt State authority to determine the scope or level of State employee benefits. Application to the States will be much the same as other Federal laws which prohibit discrimination on the basis of race or sex. The adjustment of State employee benefit plans is left entirely to the States, so long as unfair or arbitrary age discrimination does not occur relative to specific benefits or benefit plans.

The cost of State adjustments should not be as large as some estimates which unfortunately have been used in discussions of this legislation. For the State of Maine, for example, one estimate of $50 to $100 million has been offered. It is my understanding, however, that this estimate is distorted and often considered out of context. First, it is an estimate of costs that will be spread over a long period of time; that is, over 20 years or more. By comparison, the highest estimate for the first year's cost to the State of Maine under the new legislation is no more than $1 million. Second, these estimates both assume that revisions of State law would provide full disability benefits to persons who become disabled after age 60. This is not necessarily so.

State legislatures will be able to choose among different alternatives in making adjustments, including some benefit reductions. Under the equal cost or equal benefit principle, for example, States could provide for progressive reduction of disability benefits for older workers in accordance with actuarial assessments. For the same cost for each State worker, the State of Maine might choose to provide a progressively smaller disability benefit as workers get older.

Under the contract clause of State constitutions or anticutback statutes, States may face prohibitions on reductions of benefits for current State employees. To address this concern and still maximize the State's ability to mitigate any financial burden that must accompany the adjustment of State disability benefits because of termination of age 60 rules, the State transition language in the bill allows a State both to establish a new disability benefit plan and to provide for election of disability benefits by current State employees.

If a State adjusts State employee disability benefits in response to the legislation, new State employees obviously will receive benefits under the new plan. Under the transition provision, with reasonable notice, current State employees will have 180 days following the effective date of the new plan to elect whether they want to be covered under the new plan. If a State employee elects not to be covered under the new plan, the State may continue to provide disability benefits under the old plan. Current State employees will not be subject to the possible reduction of disability benefits under new disability plans unless they choose to elect such coverage. In any

case, the States will still need to determine the overall benefit structure.

I ask unanimous consent that at the end of my remarks there be inserted into the RECORD a copy of letters from the Maine State Employees Association and the Maine State Retirement System in support of the transition provision.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MITCHELL. The legislation also provides for technical assistance to States in making adjustments to bring themselves in compliance with the new law. One area for technical assistance will be in developing reasonable actuarial estimates, particularly in the absence of historical data, that will provide sufficient cost justification for different disability benefits between different age categories of workers.

UNUM Corp., the Nation's leading disability insurance underwriter, which is headquartered in the State of Maine, also has considerable experience in the area of cost justification. UNUM strongly supports this legislation and has provided significant testimony to the Senate concerning application of the equal cost or equal benefit principle.

Senator PRYOR and Senator METZENBAUM have worked diligently to make every reasonable accommodation relative to State interests in this regard. On behalf of the State of Maine, I thank them. I am pleased to join them and Senator COHEN in support of the legislation.

EXHIBIT 1

MAINE STATE EMPLOYEES ASSOCIATION,
Augusta, ME, June 25, 1990.

Hon. GEORGE MITCHELL,
U.S. Capitol, Washington, DC.

DEAR SENATOR MITCHELL: The Maine State Employees Association (MSEA), supports S. 1511, the Older Workers Benefit Protection Act. We urge that you announce that the legislation will be brought up for action by the full Senate immediately after the Fourth of July recess.

MSEA supports expansion of the coverage of the Age Discrimination in Employment Act (ADEA) to include benefit payments. Following the decision by the United States Supreme Court in Public Employees Retirement System of Ohio v. Betts, 109 S. Ct. 2854 (1989), employees have no protection from benefit reductions based on age.

We also urge your consideration of transition rules to facilitate a change over to a new employee benefit system in Maine. Employee benefits for all employees hired after the implementation of the act should fully comply with the ADEA. However, all current employees should be allowed to elect to remain in the current employee benefit system, or convert to the revised system. This election would both ease the financial burden to the state of transition to the new benefit system, and offer an element of choice to the individual.

Along with the delay in implementation for states and local governments to June 1, 1992, this transition rule enhances our support for the Older Workers Benefit Protection Act.

Again, we urge you to announce that legislation will be scheduled for action by the full Senate immediately after the Fourth of July.

Sincerely,

CARL LEINONEN,
Executive Director.

MAINE STATE RETIREMENT SYSTEM,
Augusta, ME, September 17, 1990.

Re Older Workers' Benefit Protection Act—Senate Bill 1511.

Senator GEORGE MITCHELL,
SENATE MAJORITY LEADER, RUSSELL SENATE OFFICE BUILDING, WASHINGTON, DC.

DEAR SENATOR MITCHELL: I have had an opportunity to review the latest proposed revisions to Senate Bill 1511 which incorporate the transition language for state and local governments. As you may already know, the Maine State Retirement System originally proposed this transition language in order to minimize the financial impact on Maine's public employers if required to modify their existing disability programs to comply with the provisions of ADEA.

Overall, the bill appears to be a fair compromise in addressing both the concerns of older workers regarding their eligibility for disability benefits and the cost to their public employers.

I would also take this opportunity to extend my appreciation to Mr. Robert Corolla who worked diligently in addressing the concerns of the State of Maine regarding this legislation. Please feel free to contact me at anytime if I can be of further assistance on this or any other matter affecting the State of Maine.

Yours truly,

CLAUDE R. PERRIER,
Executive Director.

Mr. JEFFORDS. Mr. President, the Older Workers Benefit Protection Act will reverse the Supreme Court's decision in Public Employees Retirement System of Ohio versus Betts. In that decision, the Court ruled that section 4(f)(2) of the ADEA exempts all provisions of a bona fide employee benefit plan unless the plan is a subterfuge for discrimination in the non fringe-benefit aspects of the employment relationship. I am personally convinced that the Congress which enacted the ADEA had no intention of broadly exempting from coverage so integral a portion of the employment relationship as employee benefits. Since such benefits have consistently amounted to approximately 40 percent of compensation costs, the contrary conclusion simply makes no sense.

Thus, I believe that we must take legislative action to reverse this court ruling and define how the ADEA effects employee benefits. This is the principal objective of the Older Workers Benefit Protection Act.

The bill would reinstate the EEOC regulations governing compliance of benefit plans with the ADEA, which were struck down by the Court in the Betts decision, and embody those regulations in the statute. The regulations have been in existence for a number of years and have formed the level playing field for the formulation of employee benefit policy. Our action in reaffirming the regulations was not intended to work any hardship on benefit plan sponsors, and we reasoned that no such hardship would be created because these sponsors were on notice of the regulations and had long-standing opportunity to comply with them.

However, since the introduction of this legislation, we have heard from representatives of the business community and, to a lesser extent, from the administration, that our interpretation of the pre-Betts importance of the regulations on employee benefit plan design and administration does not reflect the reality of benefit practice, and that this bill will upset the benefits applecart. From the outset they were concerned not only about the substantive nature of what we propose, but they also were animated by persistent rumors that once introduced this bill would proceed to the floor of the Senate without, or with only limited opportunity for hearings and debate.

Mr. President, I did not believe the public policy to be advanced by this legislation would be well served by any such closed procedure. Thus, one condition of my support for this measure was that it be managed in such a way as to allow for debate on the issues.

This is not a simple bill. There are a number of underlying policy questions regarding the approach taken by the EEOC regulations on several benefits issues, including generally the issue of benefit integration and the impact on early retirement incentive plans. We have held hearings in both the Senate and the House and heard from the interested parties on all sides of these issues. Further, we have engaged in extensive discussions and negotiations with the interested parties about the specifics and impact of our bill. These discussions have resulted in a number of changes beneficial to private and public employers as well as other plan providers which are now included in the compromise version of the bill currently under consideration.

Make no mistake Mr. President, I do wholeheartedly support the objectives of this bill. Age discrimination is intolerable and where it exists it must be eradicated. I believe that our bill is the right response to this decision by the Court. In fact, there is almost universal agreement that the Court erred in ruling that the protections of the ADEA do not apply to employee benefits, and that this error should be corrected. That, of course, is the easy part. The hard part is establishing the mechanism for accomplishing this laudable objective without disrupting other, nondiscriminatory aspects of employee benefits practice.

We have attempted to address and, in varying degrees, to accommodate the major concerns expressed by the

business community, the White House, state and local governments, and organized labor. Although there are those who will say that even this substitute does not go far enough, it is beyond dispute that all of the changes therein make the bill more favorable to plan providers. The effort clearly has been to achieve that delicate balance of providing needed protection for older workers while not intruding too heavily on the design and administration of benefit plans. I for one do not claim perfection in achieving this objective, but I do not for a moment doubt the sincerity of the effort.

The highlights of this substitute include the following:

RETROACTIVITY

The ADEA amendments made by the bill apply on a prospective basis only, thus addressing the concerns over retroactivity voiced by business, unions, and public sector employers. When enacted the bill will only govern employee benefit changes or other actions taken after enactment.

It is my clear understanding that cases that were pending at the time of the Betts decision will not be affected by the new law, even if they remain pending on the date of enactment. This, like many elements of this compromise, is a concession grudgingly made by the original sponsors. Our initial focus was to proceed rapidly to reverse the damaging Betts decision and, through retroactive application, to close any window of time during which its reasoning would constitute the state of the law. However, that objective has proven to be legislatively impossible. Thus, we have chosen the lesser evil of leaving the window open rather than losing the chance to pass a bill this year.

(A) IN GENERAL

In private sector situations where benefits are not subject to collective-bargaining agreements, the bill applies to the establishment or modification of any benefit after the date of enactment and to all other conduct occurring more than 180 days after enactment.

(B) COLLECTIVELY BARGAINED AGREEMENTS

Where a collective-bargaining agreement in effect on the date of enactment contains benefit provisions that would be wholly or partly invalidated by the amendments made in this bill, the act will not apply until the earlier of termination of the collective-bargaining agreement or June 1, 1992.

(C) PUBLIC SECTOR

Where State and local government employee benefit plans would be wholly or partly invalidated by the amendments made in this bill, and those plans may be modified only through change in the applicable State or local law, the governments will have 2 years after the date of enactment to comply with the new law.

EARLY RETIREMENT INCENTIVE PROGRAMS

(A) In general, these programs will be lawful so long as they are consistent with the relevant purpose or purposes of the act. Great concern had been expressed that the furthers the purposes of the act standard originally included in the bill would be impossible to meet. It was contended that since one of the purposes of the ADEA is to promote the employment of older workers, retirement incentives, which encourage older employees to leave the work force, would forever be subject to challenge for alleged failure to meet this test.

While the "consistent with" language was suggested by the administration as a means of addressing this problem, I was not certain that this change alone alleviated the problem. In the weekend discussions on the bill spearheaded by Senators METZENBAUM and HATCH, this point of view was reiterated and, finally, addressed. The compromise language makes clear that retirement incentive programs which are consistent with the relevant purpose(s) of the act are lawful.

(B) A special safe harbor is provided for the two most common types of early retirement incentive programs; that is, those offering Social Security bridge payments and those which subsidize a portion of an early retirement benefit.

(C) In addition to the change in standard applicable to such programs and the two safe harbors, I wish to make it clear that this sponsor does not intend that early retirement incentive plans be deemed inherently contrary to the purposes of the act. The effort to protect them in this bill is made in express recognition that such programs can be both beneficial and desirable to older workers. The EEOC, in its testimony on this bill, recognized the need to give these programs special consideration in light of their growth in the years after the EEOC regulation was promulgated. Thus, the EEOC concluded that its rule may not have been constructed with this type of benefit program in mind and it cautioned us against cutting them off legislatively without due consideration. I am confident that we now have heeded this counsel.

INTEGRATION OF PENSION WITH LONG TERM DISABILITY

Long-term disability benefits paid to an employee may be reduced by pension benefits when the employee voluntarily elects to receive them, or when the employee becomes eligible for an unreduced pension and has reached the greater of age 62 or normal retirement age under the plan.

This provision addresses the issue of double dipping by pension eligible employees who are out of work on long term disability. In discussions with representatives of the business community, the subject of allowing the offset of pensions with-long term disability under circumstances in addition to voluntary employee election was extensively examined. It is my understanding that agreement has been reached that these two benefits can be integrated in such a way that the employee receives combined payments at the level of the greater of either pension or disability. Thus, the income stream to the employee is not decreased, only the source of the funds is shifted.

SPECIAL PROTECTION FOR STATES

In addition to the 2 years it will have to comply with the new law, any State or local government that must implement a new disability plan in order to comply with this act may give current employees a choice between staying in the old plan or electing coverage under the new one. For many States with laws prohibiting a cutback in benefit levels for current employees, the free choice approach will minimize the need for additional expenditures for employee disability programs.

ADEA WAIVERS

The substitute eliminates the requirement that employers seeking a waiver in connection with an exit incentive or other employment termination program must reimburse employees for up to 8 hours of attorney consultation. Since starting to consider the subject of ADEA waivers, I have always believed that employers seeking waivers in the context of exit incentive or other termination plans should bear the burden of insuring that the employees involved are fully informed of their rights. As part of that obligation, I also happen to believe the employees should not only be told to consult an attorney, but also that the employer should share the expense of the employee's consultation with a lawyer.

The language deleted from the bill would have provided funds for this purpose on the basis of an 80/20, employer-employee copayment for up to 10 hours of attorney time at regular hourly rates. It became clear that my support of this provision was not shared by many others and that its inclusion was becoming an impediment to the possible passage of our bill to reverse the Betts decision. Given these circumstances, the deletion of the provision was mandated.

The substitute also eliminates the down side risk disclosure requirement which would have compelled employers to predict the probability and date of any demotion, termination or other adverse action which might follow an employee's decision not to participate in an exit incentive or other employment termination program. This language was specifically deleted because of the potential impact such mandated disclosures might have on involuntary retirement issues in exit incentive pro-

grams given the language included at page 27 of the committee report. Now, I understand that the offending language of the report has been expressly disavowed.

CONCLUSION

The current bill is truly in the nature of a negotiated compromise. None of the sponsors was able to include in it all of the things which were desired. The interested individuals and organizations outside of Congress all feel that they have given up too much. Perhaps it is just that feeling which demonstrates that a balance has been struck.

A tremendous amount of work has gone into achieving this compromise. It represents the best deal that we can make to address the injustice of the Betts decision in the waning legislative days of this Congress. It deserves the support of the Senate.

Mr. AKAKA. Mr. President, I rise in support of this important legislation which will give older workers the justice which the Supreme Court has taken away. As we all know, when the Supreme Court ruled that employers could discriminate against older workers in granting disability pay and other benefits, a tidal wave swept across this Nation which invalidated legal provisions that employers may not discriminate against older workers in benefits, such as disability and severance pay.

I know that negotiations have been taking place between the authors of this measure and my colleagues on the other side of the aisle. I wholeheartedly hope that the changes made to the substitute recently adopted will satisfy the objections made by its opponents. This legislation is needed to clarify the confusion created by the Supreme Court and correct the inequities which jeopardize older workers' benefits.

The 1980 census show that in my State of Hawaii there are 130,037 people above the age of 45 and 10,634 above the age of 65 still in the labor force. I am confident that these numbers are much higher in 1990, because the 65 and older population has increased by 50 percent between 1980 and 1988. Out of 10 States, Hawaii is the third highest in the Nation with over a 28-percent increase in the 65 and older population. This directly impacts the State's employment concerns because Hawaii has a 2.8 percent unemployment rate making it one of the lowest in the Nation. With statistics like this, it is important to assure these older workers that their benefits are protected for their future.

In reviewing this measure, my colleagues will find a fair bill which addressed the needs of older working Americans and their employers. Initially, businesses had tried to kill the bill, but because of the perseverance of Senators PRYOR and METZENBAUM, this measure has survived and become a priority of this 101st Congress.

Mr. GRASSLEY. Mr. President, I intend to vote for the compromise on S. 1511 which is now before us. I do for two reasons. First, as I made clear shortly after the Supreme Court handed down its decision in the BETTS case, I do not believe that we can endorse a policy which condones age discrimination in employee benefits. Clearly, Congress should go on record opposing age discrimination in employee benefits.

Second, the managers of the bill have attempted to take care of many of the problems I identified in my statement in the record of September 18, 1990. It was clear throughout the development of S. 1511 that we were dealing with a very complicated area of law, and that earlier versions of the legislation created many unnecessary potential problems.

Although not all of the concerns I identified have been resolved, the managers did attempt to deal with many of the most important of them. As a consequence, the bill before us is an improvement over the version we had before us last week.

The managers of the bill state that they have tried to insure that voluntary early retirement incentive programs commonly used by employers, and popular with employees, are not jeopardized by this legislation.

This compromise version of the bill should eliminate the possibility that an employer would be required to pay duplicate retirement and disability benefits. Otherwise, employers may have had to cutback on the disability benefits they offered. The managers of the bill have tried to make it clear that no integration of disability benefits with retirement benefits is required once an individual reaches whatever retirement age is stipulated in a pension plan.

The compromise version is drafted in such a way that ongoing benefit payments will not be disrupted once the legislation is enacted. Had earlier versions of the legislation been enacted, many felt that great disruption in employee benefit programs would have ensued.

With respect to the burden of proof issues, the version before us makes it clear that it is the plaintiff's burden under the Age Discrimination in Employment Act [ADEA] to demonstrate that his or her retirement was involuntary. Thus, an employer will not be in the position of having to prove that they are not guilty when they are accused of age discrimination. Rather, the individuals making the charge will have to prove that their accusation is correct. It seems to me that this "innocent until proven guilty" standard is more in keeping with American traditions.

The burden of proof under section 4(f)(1) of the ADEA, involving bona fide occupational qualifications, reasonable factors other than age, and violations of foreign law in cases in which the employer has a workplace in foreign countries, is not affected by this final version of the legislation. Such circumstances were not touched by the Court's Betts decision, and thus, this final version of the legislation does not open new ground on these particular issues.

The bill before us does overturn the court's allocation if the burden of proof under section 4(f)(2), the section of the ADEA dealing with bona fide seniority systems or bona fide employee benefit plans. Courts prior to Betts had stipulated that the burden of proof in such cases rested with the employer. The Court held that the burden of proof should rest with the employee. The legislation before us would allow the employer an "affirmative defense." That is, if an employer can demonstrate that they are employing a bona fide benefit plan or seniority system it would consitute a sufficient defense against a claim of age discrimination.

Under terms of this compromise, private sector employers will now have 180 days to comply with terms of the legislation. This is a much more generous compliance time line than offered in any of the earlier versions of the bill.

The statement of the managers affirms that the election a State or local public employee makes, under the provisions in the bill which permit a State to offer a choice between existing and newly created disability benefits, is permanent. The manager's statement also speaks to some of the practical objections State officials have raised about how to provide reasonable notice to employees with respect to election.

I am disappointed that we have not had an opportunity to debate, in this final version of the bill, whether its terms ought to apply to the Federal Government. The Senate voted by a large majority last week to apply the law to the Federal Government. However, under the rules the Senate accepted for consideration of the legislation today, no amendments were allowed other than the compromise version, and the provision applying the law to the Federal Government was stripped from that version.

In addition, Mr. President, the business community, and younger workers, are not going to like the strict prohibition in the bill of integration of severance and pension benefits. Both sides in this dispute over this provision supported their position with reasonable arguments reaching diametrically opposed conclusions.

It seems clear to me that there will be some reallocation of severance benefits, from nonpension eligible workers to pension-eligible workers, as a consequence of this legislation. However, the practice of not providing severance pay to workers eligible for pensions is tantamount to a mandatory retirement policy. There is no reason to assume that, just because a worker reaches the age stipulated in a pension plan as the normal retirement age, that that worker should essentially be forced to stop working and take her or his pension. I have opposed mandatory retirement for many years.

Mr. President, I am not sure we have seen the last of this legislation. As I noted earlier, employee benefit law is extremely complicated. Furthermore, we have not considered this legislation under the best of circumstances, by which I mean that we really have not had much time to consider this last version of the bill.

Thus, even though the sponsors may have tried to foresee, in this final version offered to the Senate, potential problems, we have no guarantee that they have completely succeeded. As we begin to get comment on the bill, or law, if the House passes it and the President signs it, from the affected communities, we may yet have to consider further changes in it.

Mr. KERRY. Mr. President, I am pleased to join my colleagues in supporting both the compromise substitute amendment and final passage of the Betts bill, the Older Workers Benefit Protection Act. This important legislation restores and protects the civil rights of older workers.

I also want to commend my colleagues on both sides of the aisle who worked diligently to forge a compromise agreement that we could support tonight.

Since passage of the Age Discrimination in Employment Act in 1967 [ADEA], older persons have been protected against arbitrary discrimination in the workplace based on age. In 1989, however, the Supreme Court went a long way toward eliminating this protection with their decision in the Betts case. The Court ruled that age discriminations in employee retirement and benefit plans were permissible under the ADEA in most circumstances, thus invalidating the current EEOC regulations and a 6th circuit court of appeals decision.

Left untouched, the Betts decision threatened to erode the most fundamental civil rights law safeguarding older Americans in the workplace. The legislation we will vote on today attempts to restore the rights of older workers to fair treatment in employee benefits. In addition, the bill seeks to ensure that older workers are not coerced or manipulated into waiving their rights to seek relief under the ADEA.

Support for this legislation ranges from senior citizens' groups to key labor unions to other major organizations representing the interests of older women in this country. Older individuals depend on employee benefits to protect them from what can amount to crippling medical care costs as well as to provide them with a secure retirement. The loopholes, uncertainties and fear held by many older persons after the Betts decision warranted the legislative solution we are proposing today.

I am pleased to be a cosponsor of the Older Workers Benefit Protection Act and to support its passage today.

COST JUSTIFICATION OF DISABILITY PLANS

Mr. HEINZ. Mr. President, I would like my distinguished colleague from the State of Arkansas to clarify the application of the equal benefit or equal cost principle to the benefits paid from long-term disability plans to older plan participants. I understand it is the intent of the legislation to permit long-term disability plans to link the amount or duration of benefit payments to the attainment of a specified age upon disability, so long as the amount or duration can be justified on an actuarial cost basis. For example, if the disability occurred at age 60, benefits might be payable for 5 years. At older ages, the duration of payment would be further reduced, so that if the disability occurred after age 68, the plan might not be required to pay benefits for more than 1 year.

Mr. PRYOR. Mr. President, I would say to my distinguished colleague from Pennsylvania that if an employer could show that the age based reductions in the duration of long-term disability benefits that he outlined in his example can be justified because the cost of providing the shorter duration of benefits to the oldest worker is at least equal to the cost of providing the longer duration of benefits to the younger worker, then that employer's plan would comply with the equal; benefit for equal cost principle.

Mr. HEINZ. I thank the distinguished Senator for that clarification.

Mr. GRAHAM. Mr. President, I seek clarification of section 105(c) of the substitute amendment. That section, as I understand it, is to avoid retrospective application to public employers by providing 2 years for State and local governments to achieve compliance.

Mr. PRYOR. That is correct.

Mr. GRAHAM. My concern, specifically, is with those public employers which voluntarily changed their plans to the Betts decision. If those plans, as originally written, would have been superseded by this title, would these public employer plans be protected from retrospective application by this legislation?

In other words, is it your understanding that the substitute bill would not apply retrospectively to a public employer for once having maintained such a plan?

Mr. PRYOR. That is my understanding.

Mr. FORD. Mr. President, will the distinguished author of the legislation, Senator PRYOR, yield to me for a question?

Mr. PRYOR. I yield for that purpose to the Senator from Kentucky.

Mr. FORD. I know that the Senator is very sensitive to the concerns of our elected counterparts in State and local government who will have to implement this law with respect to their employees, and I appreciate the changes he has made in the original legislation to accommodate those concerns. States, like Kentucky, which are prohibited from reducing benefits, may find themselves incurring additional costs in establishing benefit plans that comply with this legislation. While I recognize that the substitute now allows State and local governments to offer existing employees an election between existing and newly created disability benefits, Kentucky officials are concerned about the possibility that employees may attempt to opt in and out of various plans as their situation changes. Obviously, the flexibility that the substitute provides for State and local governments is negated if employees are allowed to change their election. Is it the author's intent that the election provided for under section 105(c) of the bill be a one-time election?

Mr. PRYOR. Yes; that is the intent of the legislation.

Mr. FORD. A question has also been raised about the notice requirements of section 105(c). Does the notice provision require State and local governments that decide to offer the new disability benefits election to give notice before they amend or "establish" a new disability plan, or to give notice before they implement the new plan?

Mr. PRYOR. In this case "establish" means implement. Reasonable notice must be given to employees before the new disability benefits plan is implemented, and a 180-day consideration period must be provided after the election offer is made.

Mr. FORD. I thank my colleague for these clarifications and commend him for his efforts to modify this legislation to accommodate the concerns of our State and local governments.

Mr. President, if the distinguished Senator from Arkansas will yield further, I would like to clarify a couple of points regarding this legislation that have been raised by business interests in my State.

Mr. PRYOR. I yield to the Senator from Kentucky.

Mr. FORD. I thank the Senator. As my colleagues know, employers faced with the need to reduce the size of a

work force often try to avoid involuntary layoffs by first offering incentive programs to encourage voluntary work force reductions. Many employees welcome the opportunity to participate in such programs. Is my understanding correct that S. 1511 is not intended to eliminate such opportunities or restrict the flexibility of employers to offer such programs, even if such voluntary work force reduction programs include early retirement incentives?

Mr. PRYOR. That is correct. This legislation is not intended to preclude employers from establishing early retirement incentive programs.

Mr. FORD. And what if the voluntary incentive program was not a permanent part of the benefit plan, but was offered only when necessary, such as to avoid involuntary layoffs or other reductions in force?

Mr. PRYOR. Again, if these plans are truly voluntary and are consistent with the relevant purpose, or purposes, of the act, and do not result in arbitrary age discrimination, they need not be a permanent part of the employer's benefit plan.

Mr. FORD. I Thank the Senator. I would also like to ask my distinguished colleague, the author of this legislation, to clarify the application of this legislation to existing benefit plans. Section 105 of S. 1511 clearly states that the legislation will apply only prospectively, and I thank the Senator for his assistance with this provision. However, subsection 4(k), which appears in section 103 of S. 1511, states:

> A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

Some of my constituents have raised the concern that these two provisions are potentially in conflict and create an ambiguity in the bill with regards to the effective date.

Mr. PRYOR. First let me state that I do not believe a conflict exists. S. 1511 applies only prospectively to benefits established or modified on or after the date of enactment of this legislation. This prospective application encompasses every change made in the ADEA by S. 1511, including the change contained in subsection 4(k) to which you refer. The purpose of this new subsection 4(k) is to make clear the intent of Congress that the amendments included in this legislation apply to all benefit plans, including those which predate enactment of the ADEA.

Mr. FORD. Is it correct to say, then, that subsection 4(k) will not cause the requirements of this legislation to apply retroactively to a seniority system or an early retirement incentive plan, even if it has been modified over the past 10 years?

Mr. PRYOR. That is correct.

Mr. FORD. I thank my distinguished colleague for his time and responses.

Mr. BENTSEN. Mr. President, will my friend from Arkansas yield for a few clarifying questions?

Mr. PRYOR. I yield to my friend and distinguished colleague, Senator BENTSEN, for that purpose.

Mr. BENTSEN. Is it the understanding of the Senator that the Age Discrimination in Employment Act does not apply to retirees?

Mr. PRYOR. The distinguished Senator is correct. The ADEA applies only to employees and those individuals seeking employment. However, it does apply to an individual whose retirement benefits are discriminatorily structured prior to retirement.

Mr. BENTSEN. Am I correct in saying that this bill only applies to benefits that are discriminatorily structured after the applicable effective date?

Mr. PRYOR. That is correct.

Mr. BENTSEN. My next question is regarding the equal benefit or equal cost standard which is codified by section 103 of your bill into section 4(f)(2)(B)(i) of the ADEA. As I understand section 4(f)(2)(B)(i), it completely incorporates the definition, interpretation, and application of the equal benefit or equal cost rule contained in 29 CFR section 1625.10. Is that correct?

Mr. PRYOR. That is correct. In fact, section 4(f)(2)(B)(i) specifically incorporates all 29 CFR section 1625.10.

Mr. BENTSEN. My understanding of the equal benefit or equal cost principle, as stated in 29 CFR section 1625.10, is that the rule does not require that an older worker receive the exact same level of a benefit that a younger worker receives, as long as the employer incurs the same cost in purchasing the benefit for the older worker as for the younger worker. Does my understanding correctly capture the meaning of equal benefit or equal cost?

Mr. PRYOR. The Senator is correct.

Mr. BENTSEN. Mr. President, the Teacher Retirement System of Texas administers pension plans and retiree health plans for over 80,000 retired public school teachers. The State of Texas and public school employees contribute toward the purchase of these plans. The retirement system essentially acts in the role of an intermediary, for example using contributions from the State to purchase health care plans from insurance carriers.

An issue could arise under this bill when the retirement system offers prospective retirees two packages of health care coverage. The two packages are based on whether the prospective retirees are eligible for Medicare part B health insurance coverage. As you know, eligibility for Medicare part B arises at age 65. Medicare part B is subsidized by the Federal Government and is, therefore, comparatively inexpensive health insurance which eligible persons can buy.

For those prospective retirees 65 or older, the system's health care coverage incorporates a Medicare part B "carve out." In other words, the system's private coverage does not pay for those services for which Medicare part B pays. The system does not pay because it assumes that eligible prospective retirees will purchase part B because of its cheap cost. For prospective retirees who are under 65, and therefore not yet eligible for Medicare part B, the system's health care coverage essentially pays for those services for which Medicare part B would pay. For those under 65, the coverage pays for what would be carved out under Medicare part B, plus what its private carrier normally pays.

Thus the system's coverage for these younger employees is greater than for older employees. As you can see, the system's two packages of health insurance coverage for prospective retirees are primarily distinguished by age. Consequently, this age based distinction at least raises the issue of whether the system is violating the ADEA's ban against age discrimination in employee benefits.

If the system pays approximately the equivalent amount to purchase the private insurance for the prospective retiree under 65 as for the prospective retiree 65 or older, does the system's retiree health packages violate the ADEA as amended by this bill?

Mr. PRYOR. I would say to my good friend from Texas that I wish I could give him a more definite answer than the one I am about to give. I know that he wants to provide a comfort level with this legislation for the Texas State Teacher's Retirement System.

The purpose of equal benefit or equal cost is to allow employers to take account of the fact that the cost of some benefits rises with the age of the employee. If your scenario is correct and the system spends the same amount in acquiring health coverage for all prospective retirees regardless of age, I would say that the system has a good argument that it has satisfied the equal benefit or equal cost principle.

Mr. BENTSEN. I understand the cautionsness of the Senator from Arkansas in commenting on existing employee benefit plans, and I appreciate his answers to my questions.

Mr. PRYOR. Mr. President, the unanimous-consent agreement as to the time to vote, did it say at or before 7 p.m. or did it say 7 p.m.?

The PRESIDING OFFICER. The unanimous consent order said at 7 p.m.

Mr. PRYOR. Therefore, we are prohibited from having a vote before 7 p.m.

Mr. President, I thank the Chair. I thank my colleagues.

The PRESIDING OFFICER. The Senator is correct, it is 7 p.m.

Mr. PRYOR. At 7 p.m. vote. Mr. President, I thank the Chair. I yield the floor.

Mr. METZENBAUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kentucky is recognized.

Mr. FORD. I thank the Chair.

(The remarks of Mr. FORD) pertaining to the introduction of S. 3094 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I am about to ask unanimous consent with respect to scheduling of the time in order that this matter be brought to a conclusion, but I could not move to bring this matter to conclusion without publicly expressing not only the appreciation of this Senator but the appreciation of all of the senior citizens of this country who are affected by this legislation.

I know I speak for Mrs. Betts' daughter. I know I speak for all the senior citizens, for the AARP, for the millions of others who are affected by this legislation. We are deeply appreciative that Senator MITCHELL, the majority leader of the Senate, has seen fit to find time for this bill in the closing days of the session. When the pressure is on for any number of bills, and everybody wants their bill brought to the floor, Senator MITCHELL found the time to bring this bill to the floor, and make it possible over a period of several days for it to be debated. He was patient, courteous, and he was supportive.

I want to say publicly that I know I am speaking for more than myself when I express our appreciation for his leadership in bringing this about.

ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that at 7 p.m. this evening, the Senate vote on the Metzenbaum-Hatch amendment; then vote on the committee substitute, as amended, and without intervening action or debate; then proceed to third reading and final passage of S. 1511.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I further ask unanimous consent that the vote on final passage of S. 1511 be a 15-minute vote; and the succeeding votes on S. 1224 regarding the Simon and Danforth amendments follow immediately upon disposition of S. 1511, and that the votes be 10 minutes in duration.

Mr. President, I now ask unanimous consent that the yeas and nays ordered on the committee substitute to S. 1511 be transferred to final passage of S. 1511.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. Reserving the right to object, I am not sure whether these have been cleared—have they with the Republican side of the aisle?

Mr. METZENBAUM. I have been advised by those who are part of the staff on the other side of the aisle that it has been cleared by Senator DOLE, Senator HATCH, and others—Senator GORTON, and other affected parties.

Mr. JEFFORDS. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

Mr. JEFFORDS. Mr. President, if the Senator will defer, I want to praise, if he does not mind.

Mr. METZENBAUM. No. I do not mind.

Mr. JEFFORDS. I want to take a minute. Having worked so hard with the Senator from Ohio on this particular bill and others, Senator HATCH as well, I will just take a moment. I had intended to have a number of colloquys but it is my understanding that the matters of which I have concern and which were to be the subject of colloquys have been incorporated in statements already before the body. I could not comment without letting it be known that we all have tremendous praise for the Senator from Ohio on this issue. A tremendous amount of effort has gone into trying to bring something before this body which should be passed and passed into law.

I know there are differences that we are left with. Senator HATCH worked very hard in trying to come up with a compromise. I will be voting for the bill and against the Senator from Utah. But notwithstanding that, many changes were made as a result of his efforts. We have come up with a much better bill.

This is an important piece of legislation. It is one that we should attempt to do all we can to get it passed into law and signed into law. There will be individuals, many of them, that will be injured unnecessarily if we do not do what we are attempting to do in this particular bill.

I just wanted to express myself on that matter—especially also the Senator from Arkansas [Mr. PRYOR] as well, who worked very hard on these issues.

With that, I am happy to yield the floor.

Mr. METZENBAUM. Mr. President, as the Senator from Vermont may have heard at an earlier point when I first addressed myself to this legislation, I spoke about the fact that he, as well as several other Senators, have been so instrumental in bringing about the passage of this legislation. Were it not for his support at a very early stage when it was much more difficult than at this moment, there probably would not have been a bill. I have no hesitancy in saying that once again the Senator from Vermont has indicated his courage, his good judgment, and his objectivity and support for so many issues of concern to the American people. It is a real privilege to the Senator from Ohio to have an opportunity to work with him and have him as the ranking member of our Labor Subcommittee.

Mr. JEFFORDS. I thank the Senator for those very kind words.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the question now occurs upon the Metzenbaum-Hatch substitute.

The question is on agreeing to the amendment.

The amendment (No. 2759) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nebraska [Mr.

EXON] and the Senator from Rhode Island [Mr. PELL], are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from New Hampshire [Mr. HUMPHREY], and the Senator from California [Mr. WILSON], are necessarily absent.

The PRESIDING OFFICER (Mr. BREAUX). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 245 Leg.]

YEAS—94

Adams	Ford	McConnell
Akaka	Fowler	Metzenbaum
Armstrong	Glenn	Mikulski
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Graham	Murkowski
Bingaman	Gramm	Nickles
Bond	Grassley	Nunn
Boren	Harkin	Packwood
Boschwitz	Hatch	Pressler
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bryan	Heinz	Riegle
Bumpers	Helms	Robb
Burdick	Hollings	Rockefeller
Burns	Inouye	Roth
Byrd	Jeffords	Rudman
Chafee	Johnston	Sanford
Coats	Kassebaum	Sarbanes
Cochran	Kasten	Sasser
Cohen	Kennedy	Shelby
Conrad	Kerrey	Simon
Cranston	Kerry	Simpson
D'Amato	Kohl	Specter
Danforth	Lautenberg	Stevens
Daschle	Leahy	Symms
DeConcini	Levin	Thurmond
Dixon	Lieberman	Wallop
Dodd	Lott	Warner
Dole	Lugar	Wirth
Domenici	Mack	
Durenberger	McCain	

NAYS—1

McClure

NOT VOTING—5

Exon	Humphrey	Wilson
Garn	Pell	

So the bill (S. 1511), as amended, was passed; as follows:

S. 1511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) in subsection (f), by striking paragraph (2) and inserting the following new paragraph:

"(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

"(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this Act.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act; or";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban con-

sumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

"(A) paid to the individual that the individual voluntarily elects to receive; or

"(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 180 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 (as redesignated by section 103(2) of this Act).

(e) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act if the intent of the modification is to evade the purposes of this Act.

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same

job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOTOR VEHICLE FUEL EFFICIENCY ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2714

Mr. LEVIN. Mr. President, I support the Simon amendment, the "Relief for Terminated Workers Act," and I am pleased to be a cosponsor.

This amendment will assist American workers producing motor vehicles, or in related industries, in making the shift to new employment if they find themselves displaced because of S. 1224, the Motor Vehicle Fuel Efficiency Act of 1990. They will be eligible for Trade Adjustment Act assistance for a full year after the Secretary of Transportation's finding, that S. 1224 is the primary cause of unemployment.

Though this amendment authorizes $250 million over 5 years for TAA, little or no money should be spent if the proponents of S. 1224 are correct in their estimates of few or no job losses as a result of S. 1224. Unfortunately, history suggests that their projections are wrong. The unfeasible levels and timeframe mandated in S. 1224 will cause the loss of many jobs.

Tens of thousands of autoworkers and workers in related industries could lose their jobs if S. 1224 becomes law. These workers deserve some consideration from the Government, if Congress is going to manipulate the market in a direction away from consumer preference. This amendment provides a safety net for workers in an industry that has been specifically targeted by this bill.

I urge my colleagues to vote for the amendment.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to table amendment No. 2714 offered by the Senator from Illinois [Mr. SIMON]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nebraska [Mr. EXON] and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from New Hampshire [Mr. HUMPHREY], and the Senator from California [Mr. WILSON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 49, nays 46, as follows:

[Rollcall Vote No. 246 Leg.]

YEAS—49

Armstrong	Gorton	Nickles
Baucus	Graham	Nunn
Bingaman	Gramm	Pressler
Boschwitz	Hatch	Pryor
Bryan	Helms	Robb
Bumpers	Hollings	Roth
Burns	Jeffords	Rudman
Chafee	Kassebaum	Sanford
Cochran	Kasten	Simpson
Cohen	Kerrey	Stevens
Danforth	Leahy	Symms
Dixon	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Durenberger	McCain	Wirth
Fowler	Mitchell	
Glenn	Murkowski	

NAYS—46

Adams	Bradley	Cranston
Akaka	Breaux	D'Amato
Bentsen	Burdick	Daschle
Biden	Byrd	DeConcini
Bond	Coats	Dodd
Boren	Conrad	Ford
Gore	Kohl	Reid
Grassley	Lautenberg	Riegle
Harkin	Levin	Rockefeller
Hatfield	Lieberman	Sarbanes
Heflin	McClure	Sasser
Heinz	McConnell	Shelby
Inouye	Metzenbaum	Simon
Johnston	Mikulski	Specter
Kennedy	Moynihan	
Kerry	Packwood	

NOT VOTING—5

Exon	Humphrey	Wilson
Garn	Pell	

So the motion to lay on the table amendment No. 2714 was agreed to.

Mr. BRYAN. I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2755

Mr. DASCHLE. Mr. President, I have been following the debate on Senator BYRAN'S CAFE bill and the Danforth amendment with great interest. I commend both of my colleagues for their leadership in promoting increased use of domestically produced liquid fuel alternatives to imported oil and gasoline.

Today's debate places a much-needed focus on the importance of developing such liquid fuel alternatives, especially in light of recent events in the Persian Gulf. However, it has also highlighted an unfortunate misunderstanding about the interchangeability of ethanol and methanol in dedicated alcohol vehicles.

It was stated in today's debate that a car developed to run on methanol cannot also run on ethanol. This is simply not the case.

In fact, ethanol can be used in alternative fuel vehicles with only minor, if any, alterations required. The interchangeability of the two alcohols as neat fuels is being proven every day on a large scale commercial basis in Brazil where literally hundreds of thousands of vehicles designed to run on neat ethanol are being powered by a mixture of one-third ethanol and two-thirds methanol due to that country's recent ethanol shortage. No significant modifications in the vehicles were required.

It is not only technically feasible to run a dedicated methanol car on ethanol, but the facts indicate that it is advantageous to do so. Ample data exists to verify the fact that a car designed to run on methanol would run much better on ethanol.

Because ethanol has higher energy content per gallon than methanol, the alcohol-dedicated car burning ethanol runs 34 percent farther on a tank of alcohol than it does with methanol in its tank. Ethanol is also much less corrosive than methanol, making it less taxing on automobile parts.

In addition to these significant performance-related advantages, ethanol has important environmental advan-

tages over methanol. Ethanol is less toxic than methanol. It also burns cleaner than methanol, especially in terms of little or no formaldehyde emissions.

Mr. President, it should be understood that the use of the so-called flexible fuel vehicle, that can run on gasoline, ethanol, or methanol, is not the only way to develop alternative fuel vehicles. Dedicated alcohol cars are technologically capable now of using ethanol and methanol interchangeably, or in mixture with one another. The use of ethanol would assist in making these cars turn smoother and cleaner than if just methanol alone were used.

The PRESIDING OFFICER. Under the order, the question now is on agreeing to amendment No. 2755 offered by the Senator from Missouri Mr. [DANFORTH].

The yeas and nays have been ordered. This is a 10-minute vote. The clerk will please call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nebraska [Mr. EXON] and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL], would vote "nay."

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from New Hampshire [Mr. HUMPHREY], and the Senator from California [Mr. WILSON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—55

Armstrong	Domenici	Murkowski
Bentsen	Ford	Nickles
Biden	Glenn	Packwood
Bond	Gramm	Pressler
Boren	Grassley	Pryor
Breaux	Harkin	Riegle
Bumpers	Hatch	Robb
Burdick	Heflin	Rockefeller
Burns	Helms	Roth
Byrd	Jeffords	Shelby
Coats	Johnston	Simon
Cochran	Kasten	Simpson
Conrad	Kerrey	Stevens
D'Amato	Levin	Symms
Danforth	Lott	Thurmond
Daschle	Lugar	Wallop
DeConcini	Mack	Warner
Dixon	McClure	
Dole	McConnell	

NAYS—40

Adams	Gorton	Metzenbaum
Akaka	Graham	Mikulski
Baucus	Hatfield	Mitchell
Bingaman	Heinz	Moynihan
Boschwitz	Hollings	Nunn
Bradley	Inouye	Reid
Bryan	Kassebaum	Rudman
Chafee	Kennedy	Sanford
Cohen	Kerry	Sarbanes
Cranston	Kohl	Sasser
Dodd	Lautenberg	Specter
Durenberger	Leahy	Wirth
Fowler	Lieberman	
Gore	McCain	

NOT VOTING—5

Exon	Humphrey	Wilson
Garn	Pell	

So the amendment (No. 2755) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. BRYAN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATE SENATOR BOB COFFIN HONORED AS 1990 "MAN OF THE YEAR"

Mr. REID. Mr. President, on October 13, 1990, the Hispanic Business and Professional Women's Club of Las Vegas is honoring State Senator Bob Coffin as their 1990 Man of the Year. This is a prestigious award, recognizing valuable contributions made by Outstanding Hispanic leaders from southern Nevada. This year's recipient, State Senator Bob Coffin, has proven to be an effective leader and legislator, proving time and again that he is worthy of such an honor.

Bob Coffin is a long-time resident of Las Vegas, graduating from Bishop Gorman High School and from the University of Nevada, Las Vegas, with a degree in business administration and accounting. Professionally, he is an independent insurance broker and he is the owner of Bob Coffin Books, an out-of-print book dealership. He and his wife, Mary Hausch, are committed to serving the people of southern Nevada.

Bob Coffin 8 years ago, was elected to the Nevada State Assembly, where he served on the Ways and Means Committee which approves all State spending programs, and he served as chairman of the Assembly Transportation committee. Four years ago, he was elected to the State legislature's upper house, and he has served with distinction on the senate taxation committee, the commerce committee, and the natural resources committee.

As a legislator Bob Coffin has been the champion of many important causes, including fair share distribution of State funds, increasing funding for economic development and tourism, increasing appropriations for education, and strengthening Nevada's laws against drunken driving.

Senator Coffin can also be proud of two important bills he sponsored that preserved southern Nevada's historic buildings. One of these bills successfully appropriated funds to save the Old Mormon Fort, the first pioneer settlement in Las Vegas built in the mid 1850's. He was also the principal sponsor of legislation to preserve the historic Las Vegas High School as an artistic treasure. Both of these buildings would have been subjected to potential demolition without Senator Coffin's efforts.

In addition to his legislative efforts, Bob Coffin is also an active leader in community organizations. He has served as President of the UNLV Alumni Association, national committeeman for Young Democrats of Nevada, member of the Latin Chamber of Commerce and the Las Vegas Chamber of Commerce, delegate to the International Trade of State Federal Assembly and more.

Bob Coffin also has Central American concerns. In 1985, he toured Costa Rica as a representative of the National Conference of State Legislatures, and he traveled into Nicaragua on his own to see first hand the problems of the area. Since then, he has returned to the region to work with political, business, church, and labor leaders. In 1990, Senator Coffin served as an international observer to the Nicaraguan elections and was invited to attend the inauguration of new president, Violeta Chamorro.

Bob Coffin has served southern Nevada and the Hispanic community with merit and distinction. It is only appropriate that he is being honored by the Hispanic Professional Business Women's club for his outstanding achievements.

Mr. MOYNHIAN. Mr. President, I rise to inform my colleagues that today marks the 2,018th day that Terry Anderson has been held captive in Beirut.

An integral part of ending the protracted hostage crisis in Lebanon is educating ourselves about the circumstances that provoked it. In the Meeting Reports of the September 1990 Woodrow Wilson Center Report, I discovered an item of particular interest: "Who Follows Hizbullah?" Based on a lecture, "Hizbullah as a Social Movement," presented by Wilson Center fellow Martin Kramer, this article provides context for the more familiar reports.

Mr. President, I ask unanimous consent that the above mentioned article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Woodrow Wilson Center Report 3]

WHO FOLLOWS HIZBULLAH?

Hizbullah, the Iranian-supported Shiite movement based in Lebanon, represents more than rebellion against the United States, Israel, and the West. The movement, according to Martin Kramer, is a protest against the Shiite social order itself, and particularly the claims of its rival within the Shiite sect of Islam, the Amal movement. Although Hizbullah still holds an array of foreign hostages, including Americans, its violence is now turned most ferociously against its Shiite opponents.

The Shia might have become Lebanon's great success story, said Kramer. Within the state of Lebanon, newly independent in 1943, the Shiite Muslims of rural south Lebanon and the Bekka Valley suffered from governmental neglect and exploitation by a semifeudal landed elite. In both administration and commerce, there existed semimonopolies held by Christians and Sunni Muslims.

The group that evolved into the Amal movement was first organized among the fragmented Lebanese Shia by Sayyid Musa al-Sadr, an Iranian-born Shiite cleric of Lebanese descent. Sadr's movement was essentially petitionary, Kramer explained. Sadr and a group of young and upwardly mobile Shiite clerics and professionals built their plans and careers upon the reformability of the Lebanese state; and Sadr held hunger strikes and rallies that demanded that Shiites be given their due or a fair chance to earn it. The movement was a social alliance, according to Kramer: It spoke for the multitudes of Shiite poor, the disinherited, and the oppressed, but it operated as the special vehicle of salaried Shiites at the lower levels of state administration and a new Shiite commercial bourgeoisie.

The Shiite consensus forged by Sadr ultimately dissolved, however, and a dissenting faction, Hizbullah, turned completely against the Lebanese state and confessional system. Why did the existing Amal movement lose its place as the embodiment of the hopes of poor Shiites? First, according to Kramer, a number of general factors caused instability and distrust of existing institutions: the civil war and the partial collapse of the state; the clash between Israelis and Palestinians on the Shiite soil of south Lebanon. Sadr's disappearance; and millenarian expectations unleashed by Iran's 1979 revolution and by its emissaries to Lebanon. In particular, Kramer noted the impact of Israel's invasions of 1978 and 1982; the arrival of a contingent of Iranian Revolutionary Guards in the Bekaa Valley in 1982; and Syria's many interventions throughout the 1980s.

Second, a group of young clerics found their ambitions thwarted by the established Shiite structure but encouraged by Iran, said Kramer. These clerics' training in Iraq, where the traditional academies for Shiite clergy were located, had in many cases been cut short by expulsion by the hostile government of Iraq. Impatient with the limited role assigned them because of youth and inadequate education by the formal Shiite religious establishment, they took inspiration, encouragement, and funding from Iran's emissaries to create religious communities and charitable organizations independent of the Lebanese Shiite hierarchy.

Third, a group of strongmen and commanders also became disaffected with the inflexibility of the institutions created by Sadr, said Kramer. He cited the example of Imad Mughiniyya, who is responsible for Islamic Jihad and the special operations of Hizbullah, including hostage holding. Mughniyya, among other Shiites, had been recruited by Yasir Arafat's Fatah organization in the mid-1970s in a special operations, internal security, and intelligence branch called Force 17. When the Palestinian organizations were forced to evacuate Beirut in 1982, Mughniyya is believed to have found a temporary home in Amal, but later he established a liaison with some of Iran's emissaries, who had begun a widespread campaign of recruitment among Lebanese Shiite veterans of Palestinian and leftist service, said Kramer. Eventually they formed Hizbullah into a militia the equal of Amal, which "did not subordinate them to a jealous and insecure hierarchy of officials, but offered them acceptance, rapid advancement, and substantial quantities of money and arms—not to speak of divine purpose," Kramer stated.

Fourth, Amal institutions were unable to meet social needs created by the ongoing war. The Dahiya, a region of suburbs of Beirut where Hizbullah now flourishes, received waves of Shiite refugees in 1976 after clashes between Palestinians and the Christian Phalange militia and in 1978 and 1982 after Israeli invasions. While estimates vary, as many as one million Shiites may now populate the Dahiya. Kramer noted that the industrial economy of the Dahiya has, in fact, prospered under the war—it hosts six thousand small manufacturing shops for textiles, clothing, paper goods, and furniture; forty bank branches; and hundreds of automobile repair garages. But the water, sewage, and electricity networks were built for a population of only 150,000, and services fail in many ways. Garbage collection is infrequent; the telephone network has deteriorated; and road construction and paving have virtually ceased. There is no government hospital in the Dahiya, nor are there government clinics. The more successful Shiite enterprises of the Dahiya have always been solidly pro-Amal, said Kramer. But with the arrival of impoverished Shiite refugees, Hizbullah found a following in the Dahiya. Amal neglected the needs, investing its limited resources and energies in south Lebanon and, in effect, abdicating its role in the Dahiya.

Iran and Hizbullah created an Islamic welfare state for the poor and displaced people of the Dahiya, Kramer said. Hizbullah opened its own hospital and runs clinics and pharmacies throughout the Dahiya. Its cooperatives sell basic foodstuffs at subsidized prices; at times there have been free food distribution campaigns. Hizbullah has opened a number of small factories and sheltered workshops to employ families of "martyrs" and activists. It has entered the construction business, with the guidance of Iran's "Reconstruction Jihad." Hizbullah's Department for Mobilizing Students provides scholarships and book allowances to tens of thousands, and Hizbullah has virtually taken over the government school system in the Dahiya. It has undertaken major roadworks and garbage collection. It has organized a scout movement, summer camps, and football leagues for grammar and high school students.

Simiarly, Kramer related how in the Bekaa Valley of eastern Lebanon Hizbullah is directing a share of prosperity toward its flock. In the Bekaa, the colapse of the state led to a booming trade in illicit drugs, and opium is cultivated quite openly. Local labs process the crop into heroin. Hizbullah's clergy has sanctioned this trade. The cleric Subhi al-Tufayli has said, "These are believing Shiites, oppressed and deprived. After the Lebanese government abandoned us, we have no other source of livelihood. The Lebanese economy is devastated. The militias rule. We Shiite clerics decided not to cause further suffering to the believers, and we did not forbid the cultivation of drugs. Furthermore, the export goes to Israel, the West, and the United States, and the drugs weaken these three great enemies of Islam."

Thus Hizbullah may be "a new social pact of southern villagers who have suffered most from the war and Bekaa clansmen who have profited most," suggested Kramer. The groups have an alienation from Amal and from perceived privileges of the Shiite commercial, professional, and middle classes which have been Amal's bulwark.

Consequently the civil war in Lebanaon has changed, Kramer stated. Formerly it has the character of a war among sects—Sunni Muslims, Shiite Muslims, and Maronite Christians—not within them. But since 1988 there has been carnage between members of Hizbullah and adherents of Amal. "For sheer ferocity, these fratricidal wars now match any conflict between militias representing different sects, and include even the massacre of innocents," stated Kramer.

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on September 21, 1990, during the recess of the Senate, received a message from the President of the United States submitting sundry nominations, and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received on September 21, 1990, are printed in today's RECORD at the end of the Senate proceedings.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—MESSAGE FROM THE PRESIDENT—PM 146

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Environment and Public Works:

To the Congress of the United States:

I transmit herewith the Saint Lawrence Seaway Development Corporation's Annual Report for 1989. This report has been prepared in accordance with section 10 of the Saint Lawrence Seaway Act of May 13, 1954 (33 U.S.C. 989(a)), and covers the period January 1, 1989, through December 31, 1989.

GEORGE BUSH.

THE WHITE HOUSE, *September 24, 1990.*

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 1:29 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4773. An act to authorize the President to call and conduct a National White House Conference on Small Business.

MEASURES REFERRED

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4660. An act to authorize the establishment of a memorial at Custer Battlefield National Monument to honor the Indians who fought in the Battle of the Little Bighorn, and for other purposes; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3618. A communication from the Deputy Associate Director for Collection and Disbursement of the Minerals Management Service of the Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3619. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an interim report on the relationship of the Social Security trust funds to Federal budget policy; to the Committee on Finance.

EC-3620. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Development of Prospective Payment Methodology for Ambulatory Surgical Services"; to the Committee on Finance.

EC-3621. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to September 13, 1990; to the Committee on Foreign Relations.

EC-3622. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the twentieth 90-day report on the investigation into the death of Enruque Camarena, the investigations of the disappearance of United States citizens in the State of Jalisco, Mexico, and the general safety of United States tourists in Mexico; to the Committee on Foreign Relations.

EC-3623. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the Semiannual Report of the Inspector General and the Semiannual NASA Management Report on the Status of Followup; to the Committee on Governmental Affairs.

EC-3624. A communication from the Secretary of Health and Human Resources, transmitting, pursuant to law, reports of Tier III agencies' plans for the implementation of drug testing; to the Committee on Governmental Affairs.

EC-3625. A communication from the Chief Judge of the United States Claims Court, transmitting, pursuant to law, copies of the Report of the Hearing Officer and the Report of the Review Panel in "Nebraska Aluminum Castings, Inc."; to the Committee on the Judiciary.

EC-3626. A communication from the Secretary of Education, transmitting, pursuant to law, a report on projects funded by the Fund for the Improvement and Reform of Schools and Teaching; to the Committee on Labor and Human Resources.

EC-3627. A communication from the Deputy Assistant Attorney General (Legislative Affairs), transmitting a draft of proposed legislation to establish national voter registration procedures for Presidential and congressional elections, and for other purposes; to the Committee on Rules and Administration.

EC-3628. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a contingency plan for responding to a fiscal year 1991 sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of September 20, 1990, the following reports of committees were submitted on September 21, 1990:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2415: A bill to encourage solar and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Act of 1978 (Rept. No. 101-470).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

S. 3017: A bill to amend section 28(w) of the Mineral Leasing Act of 1920, as amended, to repeal the 60-day waiting period for the granting of pipeline rights of way (Rept. No. 101-471).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND:

S. 3091. A bill to amend the Act incorporating the American Legion as to redefine eligibility for membership therein; to the Committee on the Judiciary.

By Mr. GORTON:

S. 3092. A bill to authorize a certificate of documentation for the vessel SYRINGA; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself and Mr. GARN):

S. 3093. A bill to authorize the Federal Deposit Insurance Corporation to increase deposit insurance premiums and borrow working capital funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FORD (for himself, Mr. MCCAIN and Mr. DANFORTH):

S. 3094. A bill to authorize certain programs of the Federal Aviation Administration, to require the Secretary of Transportation to implement a National Noise Policy, to authorize airport passenger facility charges as an exception to the general prohibition of state taxation of air commerce, and to repeal certain regulations pertaining to airport operate slots; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself, Mr. MITCHELL, Mr. KENNEDY, Mr. HARKIN, Mr. KERREY, and Mr. PELL):

S. 3095. A bill to authorize the creation of a National Education Report Card to be published annually to measure educational achievement of both students and schools and to establish a National Council on Educational Goals; to the Committee on Labor and Human Resources.

By Mr. SASSER (for himself and Mr. GORE):

S. 3096. A bill to extend the period during which certain property is required to be placed in service to qualify for transition relief under section 203 of the Tax Reform Act of 1986 and to extend the period during which certain bonds may be issued under section 1317 of the Tax Reform Act of 1986; to the Committee on Finance.

S. 3097. A bill to extend the period during which certain property is required to be placed in service to qualify for transition relief under section 203 of the Tax Reform Act of 1986 and to extend the period during which certain bonds may be issued under section 1317 of the Tax Reform Act of 1986; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. CONRAD, Mr. BAUCUS, Mr. BURDICK, Mr. KERREY, and Mr. EXON):

S. 3098. A bill to permit producers to store excess wheat in the producer reserve program for the 1990 crop of wheat, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SIMPSON:

S. 3099. A bill to amend the Immigration and Nationality Act to strengthen provisions added by the Immigration Reform and

Control Act of 1986; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 3100. A bill to amend the Harmonized Tariff Schedule of the United States to clarify the classification of linear alkylbenzene sulfonic acid; to the Committee on Finance.

By Mr. HOLLINGS (for himself and Mr. BRYAN):

S. 3101. A bill to amend the Foreign Agents Registration Act of 1938 to strengthen the registration and enforcement requirements of the Act, and to amend title 18, United States Code, to limit the representation or advising of foreign persons by certain Federal civilian and military personnel, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. RIEGLE, Mr. WILSON, Mr. COCHRAN, Mr. DURENBERGER, Mr. CHAFEE, Mr. PRESSLER, Mr. D'AMATO, Mr. HEINZ, Mr. DECONCINI, Mr. HATCH, Mr. GRAHAM, and Mr. BOSCHWITZ):

S. 3102. A bill to amend title XVI of the Social Security Act to permit disabled and elderly people to maximize their independence; to the Committee on Finance.

By Mr. DOLE (for himself and Mr. MITCHELL):

S.J. Res. 369. A joint resolution designating 1991 as the "Year of Thanksgiving for the Blessings of Liberty"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND:

S. 3091. A bill to amend the act incorporating the American Legion so as to redefine eligibility for membership therein; to the Committee on the Judiciary.

AN ACT TO INCORPORATE THE AMERICAN LEGION

Mr. THURMOND. Mr. President, I am pleased to introduce today legislation which would make changes in the American Legion's Federal charter in regard to its membership eligibility criteria. These changes would offer Legion membership to men and women who were in active U.S. military service from August 24, 1982, through July 31, 1984, or from December 20, 1989, through January 31, 1990. These time periods reflect the Lebanon, Granada, and Panama conflicts.

Federal legislation was enacted on September 16, 1919, to incorporate the American Legion. The organization's purposes, powers, membership criteria and related characteristics were cited in that measure. That original law was very specific in setting the standards for Legion membership eligibility. There have been periodic changes since 1919 to accommodate veterans of World War II, the Korean war, and the Vietnam war.

The American Legion wants to offer membership to those men and women who served on active duty in the U.S. Armed Forces during several recent periods of armed conflict against military forces of other nations. These periods include the Lebanon, Granada, and Panama conflicts.

Since the principal element of Legion membership involves honorable service between specific dates, I am proposing that the original act of incorporation be amended to include the periods from August 24, 1982, through July 31, 1984, and from December 20, 1989, through January 31, 1990.

in making this most recent request for an amendment to its act of incorporation, the American Legion is seeking to maintain the principal theme that has governed membership eligibility throughout its 71 year history. The American Legion has consistently welcomed those citizen soldiers who have rendered faithful service during wartime, whether it be declared or undeclared. This request also observes, and attempts to address, the changing nature of armed hostilities in recent years—a period that has featured a trend toward very limited, mission-oriented U.S. military engagement.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD after my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3091

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act entitled "An Act to incorporate The American Legion", approved September 16, 1919 (41 Stat. 285; 36 U.S.C. 45), is hereby amended to read as follows:

"SEC. 5. No person shall be a member of this corporation unless he has served in the naval or military services of the United States at some time during any of the following periods: April 6, 1917, to November 11, 1918; December 7, 1941, to December 31, 1946; June 25, 1950, to January 31, 1955; December 22, 1961, to May 7, 1975; August 24, 1982, to July 31, 1984; December 20, 1989, to January 31, 1990; all dates inclusive, or who, being a citizen of the United States at the time of entry therein, served in the military or naval service of any governments associated with the United States during said wars or hostilities; provided, however, that such person shall have an honorable discharge or separation from such service or continues to serve honorably after any of the aforesaid terminal dates.".

By Mr. GORTON:

S. 3092. A bill to authorize a certificate of documentation for the vessel *Syringa*; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "SYRINGA"

● Mr. GORTON. Mr. President, the bill I am introducing today would provide a waiver for the M/V *Syringa* so that it could be used both as a family and a charter vessel.

The M/V *Syringa* was built in Norway in 1962. It is 93 feet long and has a gross weight of 154 metric tons. The vessel was purchased in 1984 by Mr. James M. Brown of Sandpoint, ID, for use as a family yacht and for charters to small parties. Mr. Brown is now deceased and the current owner is the Brown family business organization, Pack River Management Co. of Sandpoint, ID.

The vessel is now undergoing extensive repairs in Puget Sound shipyards.

I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel *Syringa*, hull identification number 363412.●

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 3093. A bill to authorize the Federal Deposit Insurance Corporation to increase deposit insurance premiums and to borrow working capital funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DEPOSIT INSURANCE FUNDS FLEXIBILITY ACT

● Mr. RIEGLE. Mr. President, I rise to introduce, at the request of the administration, a bill to give the Federal Deposit Insurance Corporation increased flexibility to raise deposit insurance assessments and to otherwise help maintain the integrity of the insurance funds. Senator GARN joins me in introducing this legislation by request.

Ten days ago, I introduced a similar measure, S. 3045, which has been cosponsored by Senators SHELBY, KERRY, GRAHAM, D'AMATO, DODD, CRANSTON, AKAKA, WIRTH, METZENBAUM, SIMON, and BRYAN. I strongly support the thrust of the administration's proposal. Testimony before the Banking Committee by both the General Accounting Office and the Congressional Budget Office raised serious questions about the ability of the FDIC to maintain adequate reserves in the insurance fund for banks, under current law. This legislation provides additional authority to the FDIC to raise assessment premiums, if necessary. The Banking Committee will hold a hearing on Wednesday on these two bills, and it is my intention to work closely on a bipartisan basis with members of the committee and with the administration to move legislation in this area quickly.

I am particularly pleased that the administration's bill includes a provision to enable the FDIC to borrow from the Federal Financing Bank. This will give the FDIC authority to borrow at cheaper rates than currently allowed, in the event of a temporary liquidity problem. It parallels similar

authority possessed by the RTC. Last year, I urged RTC's use of that authority, which has since saved considerably on RTC's borrowing costs, and I think it is very desirable that the FDIC have a similar power.

Mr. President, I ask unanimous consent that a section-by-section analysis and the letter of transmittal be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, September 20, 1990.

Hon. DAN QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: The Administration hereby transmits draft legislation entitled the "Deposit Insurance Funds Flexibility Act of 1990." Also enclosed is a section-by-section analysis of the draft legislation.

The draft legislation would amend the Federal Deposit Insurance Act to provide the Federal Deposit Insurance Corporation (FDIC) with new tools to preserve the solvency of the funds that insure deposits in insured banks and thrifts. These tools are critical since, along with capital, the insurance fund is a crucial buffer that prevents the taxpayer from paying for losses of insured institutions. While the Administration will provide additional recommendations for deposit insurance reform later this year in the study mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Administration urges the prompt enactment of the draft legislation in order to provide the FDIC with needed flexibility that can be used immediately to protect the deposit insurance funds. The FDIC supports this draft legislation.

The draft legislation provides the FDIC with significantly greater flexibility to set assessment and rebate levels for insured institutions, making it much more like a private insurance company that sets rates and dividends on the basis of actual experience and anticipated risks. Like other legislative proposals introduced in both the Senate and the House of Representatives, the draft legislation would remove arbitrary statutory constraints that establish absolute limits on annual and overall assessment rates. The draft legislation would also authorize the FDIC to set assessment rates for semiannual periods instead of the annual assessment rate required under current law.

In addition, the draft legislation would remove provisions in existing law that mandate rebates of assessments. Instead, rebate determinations would be left to the discretion of the FDIC, which would take into account the need to build up fund reserves to withstand future periods of unusual stress.

Although the draft legislation would remove certain constraints on assessments, it is emphasized that the FDIC would still be required to take into account the effect of any rate increase on the earnings and capitalization of insured institutions; it would be counterproductive if the revenue from increased assessments was offset by losses from insolvencies caused by the increase, or if an increase caused a substantial weakening of the industry's capital or ability to attract capital.

Finally, the draft legislation contains a specific provision stating that the FDIC is authorized to borrow from the Federal Financing Bank (FFB) for liquidity or working capital purposes. It would not be used to increase the reserves available to pay for actual losses, because the borrowing would be subject to the FDIC's obligation cap as provided in FIRREA. This statutory cap prohibits the FDIC from incurring any obligation, including loans from the FFB, that would reduce the net worth of the insurance fund to less than 10 percent of fund assets. This net worth cushion is designed to absorb unanticipated losses associated with FDIC borrowing.

The purposes of the FFB provision is to provide the FDIC with sufficient cash for fully collateralized working capital through less expensive government financing. In most cases, this is clearly preferable to using expensive FDIC notes to purchase assets during resolutions of involvent banks. The 1988 transactions of the Federal Savings and Loan Insurance Corporation make it clear the deposit insurer should resolve cases on the basis of what produces the least cost to the government, not what requires the expenditure of the least cash. This provision of the Act directly addresses this concern, and would remove incentives for costly regulatory forbearance.

The Office of Management and Budget has advised that there is no objection to the submission of the draft legislation to the Congress and that its enactment would be consistent with the program of the President.

Sincerely,

JEANNE S. ARCHIBALD,
Acting General Counsel.

SECTION-BY-SECTION ANALYSIS

Section 1. Title.—Section 1 provides that the title of this Act is the "Deposit Insurance Funds Flexibility Act of 1990."

Section 2. FDIC authorized to adjust assessment rates at such times as appropriate.—Section 2 provides that the Federal Deposit Insurance Corporation (FDIC) will set assessment rates for insured depository institutions at such times as the FDIC determines in its sole discretion to be appropriate. Any change in the assessment rate for a semiannual period would be required to be made 30 days prior to the effective date of the assessment. This section would amend current law which requires that the FDIC set assessment rates annually and requires that the FDIC announce assessment rates by September 30 of each year for the succeeding year.

Section 3. FDIC authorized to set designated reserve ratio.—Section 3 eliminates the 1.50 percent cap in current law on the designated reserve ratio for the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF). The 1.25 percent minimum under current law remains, but the FDIC would be authorized pursuant to the amendment to raise the ratio to any higher level if justified by circumstances that raise a significant risk of substantial future losses to the respective fund. Section 3 also eliminates the Earnings Participation Account and the distributions thereunder. This means that investment income on reserves in each Fund above the ratio of 1.25 percent (Supplemental Reserves) are not automatically distributed to Fund members.

Section 4. FDIC authorized to increase assessment rates as appropriate.—Section 4 amends current law with respect to assessment rates for BIF and SAIF members. Section 4 maintains the stated annual assessment rates as minimums and deletes the limitations on increasing those rates. The Board of Directors of the FDIC is authorized to determine the assessment rate for BIF and SAIF members as the Board determines to be appropriate to maintain the reserve ratio at the designated reserve ratio or, if the reserve ratio is less than the designated reserve ratio, to restore the reserve ratio to the designated reserve ratio within a reasonable period of time. In setting any rate above the stated minimum, the Board must take into consideration the following factors: expected operating expenses, case resolution expenditures, expected income (provided, however, that anticipated funds from Treasury to SAIF are not included in the calculation; thus, payments from SAIF members would reduce the taxpayers burden), the impact on earnings and capitalization of the insured institution, and any other factors that they deem appropriate. For BIF members, the foregoing assessment rate will not be less than the greater of 0.150 percent or $1,000 for each member for each year. For SAIF members, the foregoing assessment rate will not be less that the greater of $1,000 for each member in each year or 0.208 percent until December 31, 1990; 0.230 percent from January 1, 1991, through December 31, 1993; 0.180 percent from January 1, 1994, through December 31, 1997; and 0.150 percent after December 31, 1997.

In general, this section removes the maximum assessment rate limitation of 0.325 percent and the 0.075 percent per year increase restriction, and the prohibition on increasing the rate so long as the fund ratio is increasing. Also, this section makes the stated assessment rates under current law the minimum rates. Section 4 also gives FDIC added flexibility to consider any factors it deems appropriate to fix the assessment rate and excludes anticipated Treasury funding to SAIF in fixing the rate.

Section 5. Assessment procedures modified to permit semiannual assessments.—Section 5 provides for the setting of semiannual assessment rates for BIF and SAIF members. While assessments had been collected semiannually, the rate can only be set annually under current law.

Section 6. Assessment credits authorized when reserve ratio expected to exceed designated reserve ratio.—This section conforms assessment credit provisions to the proposed semiannual assessment time frame. In addition, this section amends existing law to provide that it is within the discretion of the Board of Directors of the FDIC, rather than mandatory as under current law, to prescribe assessment credits to BIF and SAIF members when the reserve ratio is expected to exceed the designated reserve ratio for the respective Fund in the succeeding year.

Section 7. FDIC authority to borrow from Federal Financing Bank.—Section 7 adds a specific provision stating that the FDIC is authorized to issue and sell its obligations to the Federal Financing Bank (FFB), and the FFB is authorized to purchase and sell the FDIC's obligations on terms and conditions determined by the FFB. This would permit the FFB to purchase FDIC obligations without regard to whether or not FDIC is a "Federal agency" under the FFB Act.●

● Mr. GARN. Mr. President, I rise today to join my colleague, the chairman of the Banking Committee, to introduce by request the Deposit Insurance Funds Flexibility Act of 1990. This bill was submitted by the Treasury Department to address the FDIC's

critical need to raise funds for the Bank Insurance Fund [BIF].

The GAO and CBO have recently testified that the BIF is under severe pressure from several years of record bank failures. Given our experience with the S&L industry, these warnings from the GAO and the CBO must be taken seriously. The FDIC, created during the depression, has never before experienced the magnitude of losses it has weathered the past 2 years. As a result of the losses, the ratio of reserves to insured deposits has been reduced to an all-time low of less than .70 cents per $100—little more than half the statutory objective of $1.25. And more losses are anticipated this year.

The Treasury's bill would provide the FDIC with new authority in three key areas:

First, the FDIC would be authorized to raise the deposit insurance premiums that banks pay without the limits set by Congress; they would be further authorized to change the rates twice each year rather than annually.

Second, the FDIC would no longer be required to rebate assessments when the fund reaches a predetermined limit. This will enable the FDIC to bolster the fund in anticipation of unusual stress on the fund such as we are experiencing now.

Third, finally the legislation would provide the FDIC with liquidity borrowing authority from the Federal Financing Bank. This borrowing authority would provide the FDIC with cheaper working capital than would be available to it in the credit markets or from assisted banks. The borrowing would be fully collateralized and would not be allowed if it would reduce the net worth of the fund to less than 10 percent.

While we must all agree that action is necessary, the FDIC should be careful not to assess increased premiums to the detriment of the fund itself. If premiums are set too high, it could exacerbate losses to the FDIC fund by causing the failure of marginal institutions. This result would be counterproductive to the goal of strengthening the insurance system.

The Treasury's language deals with this question by requiring the FDIC to consider the effect of any rate increase on the earnings and capitalization of insured institutions, acknowledging that while we must move immediately, we must not move recklessly.

There is no doubt that this body has an obligation to act on this matter before we adjourn. Although the Treasury's bill addresses my primary concerns, there are several other bills which also attempt to deal with this crisis. We should move expeditiously to examine all of these legislative proposals and then act before this session is over.●

By Mr. FORD (for himself, Mr. MCCAIN, AND MR. DANFORTH):

S. 3094. A bill to authorize certain programs of the Federal Aviation Administration, to require the Secretary of Transportation to implement a National Noise Policy, to authorize airport passenger facility charges as an exception to the general prohibition of State taxation of air commerce, and to repeal certain regulations pertaining to airport operating slots; to the Committee on Commerce, Science, and Transportation.

AIRPORT CAPACITY ACT

Mr. FORD. Mr. President, today I am introducing a bill to reauthorize certain programs of the Federal Aviation Administration [FAA], and to recognize the linkage between airport capacity constraints and noise. My bill will ensure adequate levels to continue the modernization of the national airspace system plan, the improvement of the air traffic control system, the expansion of airport capacity. It will also mandate the development and implementation of a national noise policy, and, contingent upon the noise policy, will authorize the imposition of passenger facility charges. Finally, it will resolve some of the competition concerns I and my colleagues on the Aviation Subcommittee have identified over the past couple of years.

I was disappointed last February, when the much awaited National Transportation Policy was issued by the Secretary of Transportation. Aircraft noise was mentioned but there was no call for a national noise policy. No issue facing air transportation is more important than settling the noise debate. The greatest obstacle to expanding airports and increasing air carrier service is the opposition to aircraft noise and not the cost of building more runways and establishing more technologically advanced air traffic control. The threat of jet noise has prevented the construction of a new airport in this country since 1973 when the Dallas/Fort Worth Airport was constructed. There is no doubt that the cause for the capacity crisis is aircraft noise. Delays and congestion are the result of the noise problem and airline passengers are the victims.

The lack of leadership from the Federal Government has created conflict between the airlines, the airport operators and the communities they serve. Airports are now telling the airlines what kind of aircraft they can fly as a method of regulating noise. Some airports have enforced restrictions on the type of aircraft, the number of operations and the time of day for operations.

The patchwork quilt of local noise restrictions is the major impediment to increasing airport and airway capacity. Recently, the Administrator of the Federal Aviation Administration, Admiral Busey, stated that more than 400 airports have now adopted local noise regulations and that the FAA wants to step in with a national standard. Noise has a definite impact on interstate commerce.

The Department of Transportation estimates that in 1978 more than 5 million Americans were living in unacceptable noise levels. Due to the enormous investment by the airlines in quieter aircraft the number has declined to 3.2 million. This was during a period when the airline passengers doubled and the number of aircraft operations increased by 50 percent.

Citizens are continuing to build and buy housing near airports. Local governing officials are zoning land surrounding airports to allow residential and other noncompatible land use in unacceptable noise areas. As this continues to occur throughout the country there is going to be an even greater call for noise restrictions. The solution is to establish a National Noise Policy. Since a vast number of airport operations are classified as interstate travel, it is appropriate for the Federal aviation leaders to end the noise debate.

Aircraft are rated on the amount of noise they make taking off and landing. Stage 1, the noisiest aircraft such as the Boeing 707 and the Douglas DC 8, were banned by the Congress in 1987. They no longer fly into airports unless they have been brought up to State 2 levels. State 2 are quieter than stage 1 and include the older Boeing 727, 737, and 747 and the McDonnell Douglas DC-10. The new technology and the quietest aircraft are the Stage 3, which includes the new Boeing 737, 747, 757, 767, Lockheed L10-11, McDonnell-Douglas MD 80 and the European Airbus.

Under the provisions of this legislation Stage 3 will be the nationally acceptable noise standard. There is no quieter technology even though some airports are drafting noise restrictions as if there were. Stage 3 must not be restricted even if technological improvements are developed by aircraft manufacturers.

Most of the airlines have large orders for new stage 3 aircraft. Not only are stage 3 aircraft quieter than stage 2, they are also more fuel efficient. The aircraft orders amount to $100 billion, and Wall Street predicts the airline industry will lose billions in the next 2 years. It is no wonder that the airlines want a guarantee that they can continue to use the new aircraft. The goal of the National Noise Policy is to strike a balance between local concerns, national air transportation and the need for protection of stage 3 aircraft. This is a large task and the appropriate method is a regulatory proceeding at the Department of Transportation. This legislation will

provide the framework that the Department of Transportation will use to develop a national noise policy. Local officials, airport operators, noise interest groups and the airlines will all have the opportunity to make their case before the Department of Transportation during the regulatory process.

After the implementation of the noise policy not later than January 1992, this legislation amends the Federal Aviation Act to allow the imposition of approved Passenger Facility Charges [PFC's]. PFCs have been on the lips of the Secretary of Transportation and of many in the airport community for the past 10 months. Our colleagues in the House of Representatives passed an FAA reauthorization bill which includes a PFC. I have resisted the idea and have not been shy about say so. Passengers are already paying plenty to fly. The revenues from the existing 8% ticket tax are sitting unused in the Airport and Airway Trust Fund to the tune of $7.6 billion. I am certain that the budget summiteers will increase that tax to 10 percent. Fares are high and one reasons they are is that airlines need to pay off the bonds which they bought to finance airport projects. So we already have the passenger paying twice for airport improvements. Now if you add up to $12.00 to the cost of a ticket, as the Administration proposes and the House bill authorizes, you have added significantly to the cost of travel. Furthermore, most passengers who connect through cities enroute to their final destination do so not by choice, but because there is no direct flight. Why should these passengers have to pay again to pass through an airport to which they didn't choose to go?

I am also worried about accountability after a PFC is levied and collected. The House bill does not contain the checks and balances which I believe are necessary to assure responsible use of the funds. I believe if this is to be a local tax, it should be agreed to by the community and the airport users.

Still, I think a new revenue source for airport expansion could be useful, and I accepted the challenge of developing a PFC proposal which would respond to the needs and concerns of the aviation community as well as provide me with the assurances I need about the process and disposition of the funds.

My bill provides for secretarial approval of passenger facility charges for specific projects following implementation of a national noise policy, and if the balance in the airport and airway trust fund is less than $4 billion. To assure that the trust fund does not build up again, the bill terminates PFC authorization should appropriations fail to fund at least 95 percent of the amounts authorized for the three FAA accounts drawn from the fund. The PFC charge shall not exceed $3 and shall be collected only from passengers originating at an airport opting to impose such a charge. This would avoid saddling passthrough or connecting passengers with a tax for a facility they don't really use and would tax the locals who do. The airlines will collect the PFC and the Secretary shall prescribe through regulation full compensation for collection and handling costs.

My bill does not require that airports who adopt PFC's turn back part of their entitlements, as does the House bill. Since the bill limits the PFC to originating passengers only, I did not think it would be fair to require the participating airports to return a portion of their entitlements to establish a fund for general aviation and nonhub airports. If a conference committee at a later date determines that a turnback of entitlements is desirable, then I believe that the apportionment now used by the FAA to distribute State entitlements should be the means of distributing the returned funds. The States are in a better position to assess the needs of small airports and general aviation.

This legislation requires extensive consultation with all interested groups before a request for PFC approval is sent to the Secretary. Projects for which PFC's may be used must be eligible costs under the existing airport improvement program, with the exception of gates which may be considered eligible provided they not be subject to long-term leases exceeding 10 years, or to majority in interest clauses.

I have worked hard over the last 2 years on the Aviation Subcommittee with my colleague and ranking member, Senator McCain, to identify some of the problems and barriers to competition in the airline industry. There are four airports in the United States which the FAA designated as high density in 1969, and imposed a slot limit at each of these airports. The air traffic controllers' strike in 1981 and the resulting shortage of controllers compounded the problem and the high density rule was continued. By the mid-1980's, the system for reallocation of unused slots, or for withholding slots for use by new entrants, had become so contentious and unwieldy that the Secretary of Transportation attempted to solve the problem through the buy-sell rule. This rule turned the slots over to the carriers who held them at the time, and thereafter allowed the carriers to buy and sell slots. The result has been that big carriers get more slots, and the little ones or the new ones are left out. Since the high density rule limits the number of operations, there is no way to increase capacity to accommodate new entrants. The lack of competition results in higher fares for passengers and, in many cases, less service. Furthermore, the Government gave these rights to the carriers; the Government got nothing in return; and the carriers in some cases sold the slots for big money.

In July, Senator McCain and I and others introduced the Airline Competition Equity Act to abolish the buy-sell rule; to direct the Administrator of FAA to provide extra capacity at these four airports to be used only for new entrants; and to eliminate the high density rule itself 18 months after enactment. After that, if the FAA wants to impose slot controls on any airport, the Administrator must certify to Congress that such a rule is necessary for aviation safety.

The legislation was marked up and reported out of the Commerce Committee at the end of July, and I have incorporated it in this FAA reauthorization legislation.

Mr. President, I request unanimous consent that the text of the bill be printed in the Congressional Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 3094

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE

This Act may be cited as the "Airport Capacity Act of 1990".

SEC. 101. FINDINGS.

The Congress finds that:

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which have impeded its ability to meet transportation needs, and are imposing undue burdens on interstate and foreign commerce;

(3) a noise policy must be implemented at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the technology aircraft, combined with the use of revenues, including those available from passenger facility charges, for noise management;

(6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) a precondition to the establishment or collection of a passenger facility charge shall be the establishment by the Secretary of Transportation of a national noise policy;

(8) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity;

(9) provisions of subpart S of part 93 of title 14, Code of Federal Regulations (known as the "buy-sell rule"), which allow a public right to be used as a private asset, not only restrict competition at the four airports whose use is controlled through slots but also can impede competition in air transportation throughout the northeastern and midwestern United States;

(10) passengers pay higher fares at slot controlled airports than at other airports;

(11) increasing the number of slots at high density traffic airports will make it easier for carriers not already engaged in regular operations at those airports to achieve regular operations; and

(12) improvements in the air traffic control system since the initiation of slot controls, including new technology and new methods of regulating air traffic, necessitate a complete review methods of regulating air traffic, necessitate a complete review of the practice of using slots to control access to high density traffic airports.

TITLE II—AUTHORIZATIONS OF APPROPRIATIONS

SEC. 201. FAA FACILITIES AND EQUIPMENT.

That (a) section 506(a)(1) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(a)(1)) is amended—

(A) by striking "and" immediately after "October 1, 1989,"; and

(B) by inserting immediately before the period at the end of the first sentence the following: "$14,625,200,000 for fiscal years ending before October 1, 1991, and $17,625,200,000 for fiscal years ending before October 1, 1992" "* * * .f the first sentence the following: ", and

SEC. 202. AIRPORT IMPROVEMENT PROGRAM.

Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) is amended—

(1) in subsection (a) by striking "$13,816,700,000" and inserting "$13,916,700,000"; and

(2) in subsection (b) by striking "September 30, 1987" and inserting "September 30, 1992".

SEC. 203. FAA RESEARCH, ENGINEERING AND DEVELOPMENT.

(a) Section 506(b)(2) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(b)(2)) is amended—

(1) in subparagraph (B)(vii), by striking "and";

(2) in subparagraph (C), by striking the period at the end and inserting in lieu thereof "; and" and

(3) by adding at the end of the following new subparagraph:

"(4) for fiscal year 1991, $260,000,000, and for fiscal year 1992, $260,000,000.".

(b) Section 506(b)(4) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(b)(4)) is amended—

(1) in subparagraph (A), by striking "and 1990" and inserting in lieu thereof "1990, 1991, and 1992"; and

(2) in subparagraph (B), by striking "and 1990" and inserting in lieu thereof "1990, 1991, and 1992".

(c) Section 506(d) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(d)) is amended by striking "and 1990" and inserting in lieu thereof "1990, 1991, and 1992".

SEC. 204. FAA OPERATIONS.

AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated for operations of the Administration "$4,088,000,000 for fiscal year 1991 and $4,412,600,000 for fiscal year 1992.".

TITLE III—NATIONAL AVIATION NOISE POLICY

SEC. 301. NATIONAL AVIATION NOISE POLICY DEVELOPMENT.

(a) The Secretary of Transportation shall, by regulation, issue not later than January 1, 1992, develop and articulate a National Aviation Noise Policy which takes into account the Findings and Determinations and provisions of this * * *.

(b) The National Aviation Noise Policy shall include the establishment of a date or dates for the possible phasing out of Stage 2 technology aircraft as part of a comprehensive national noise management scheme. Such consideration must include a detailed economic analysis of the impact of any phaseout date on competition in the airline industry, including the carriers' ability to achieve capacity growth consistent with the projected rate of growth for the industry; the impact of constrained capacity and aircraft prices on airfares and competition within the airline and air cargo industries; the impact on non-hub and smaller community air service and the impact of such a phaseout on new entry into the airline industry. No phaseout date shall be approved if it would result in an unreasonably adverse impact on any of these considerations.

SEC. 302. NOISE AND ACCESS RESTRICTION REVIEWS.

(a) The National Aviation Noise Policy shall require the establishment of a program for the mandatory review and approval of all existing or proposed local airport noise or access restrictions by the Federal Aviation Administration.

(b) No airport noise of access restriction could be submitted for approval or approved in accordance with the program if it contains any restriction on the operation of a Stage 3, quiet technology aircraft, including but not limited to:

(1) any restriction as to noise levels generated on either a single event or cumulative basis;

(2) any limit, direct or indirect, on the total number of Stage 3 aircraft operations;

(3) any noise budget or noise allocation program which would include Stage 3 aircraft;

(4) any restriction imposing limits on hours of operations;

(5) any other limit on Stage 3 aircraft.

(c) No airport noise or access restriction could include a restriction on other than Stage 3 aircraft, unless the airport operator submitting the existing or proposed noise or access regulation to the Administrator for review and approval in accordance with this Act has submitted concurrently:

(1) a complete analysis of the anticipated or actual costs and benefits of the existing or proposed noise regulation;

(2) a detailed description of alternative regulations;

(3) a detailed description of the alternative measures considered not involving aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access regulation. The analysis of anticipated costs and benefits shall include an estimate of the potential economic and operational impact of the noise or access regulation on the national air transportation system.

(d) After review of the information described in subparagraph (c) and any other information the Administrator deems necessary, the Administrator shall approve or disapprove such proposed noise regulation subject to the provision of subsection (e).

(e) The Administrator shall not approve a noise or access regulation unless the Administrator finds the following conditions to be supported by substantial evidence:

(1) the regulation is reasonable, nonarbitrary and nondiscriminatory;

(2) the regulation does not create an undue burden on interstate or foreign commerce;

(3) the regulation is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace;

(4) the regulation does not conflict with any existing federal statute or regulation;

(5) the airport operator provided an adequate opportunity for public comment with respect to the regulation;

(6) the airport operator's rejection of alternative means of minimizing or otherwise managing noise was reasonable; and

(7) the benefits accruing from the regulation outweigh the associated costs, including all costs attributable to the impact or potential impact of the regulation on the national air transportation system.

(f) Sponsors of facilities operating under noise or access restrictions at the time of passage of this Act shall not be eligible to impose a Passenger Facility Charge, and shall not be eligible for grants authorized by Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) 90 days after the date on which the Secretary promulgates the final rule called for under Section 301 of this Act, unless the Administrator has approved the restriction under Section (e) of this Title, or the restriction has been rescinded.

(g) The Administrator shall reevaluate any previously approved noise regulation upon the request of any aircraft operator able to demonstrate to the satisfaction of the Administrator that there has been a change in the noise environment of the affected airport and that a review and reevaluation of the benefits and costs of the previously approved noise regulation is therefore justified.

(h) The Administrator shall establish by regulation procedures under which the evaluation provided in subsection (g) of this section shall be accomplished. Such evaluation shall not occur less than 2 years after a determination under subsection (g) of this section has been made.

SEC. 303. FEDERAL LIABILITY FOR NOISE DAMAGES.

In the event of a disapproval of a proposed noise or acess restriction, the Federal government shall assume liability for noise damages to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims Court.

SEC. 304. PRIVATE RIGHT OF ACTION.

An aircraft operator may commence a civil action against an airport proprietor for the purpose of protecting its rights under this Act, in any United States District Court without regard to citizenship or amount in controversy.

SEC. 305. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.

Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982, as amended, or impose or collect a passenger facility charge, unless the Administrator:

(1) assures that the airport is not imposing any noise or aceess restriction not submitted and approved in compliance with this Act;

(2) has approved any noise or access restriction in place at that airport; and

SEC. 306. NOISE COMPATIBILITY PROGRAM.

No proposal for the imposition of a passenger facility charge shall be approved by the Secretary if the airport has not conducted an airport noise compatibility program

pursuant to Section 104(b) of the Aviation Safety and Noise Abatement Act of 1979.

TITLE IV—PASSENGER FACILITY CHARGES

SEC. 401. DEFINITIONS.

For purposes of this title the following definition applies: Eligible Airport-related Project—The term "eligible airport-related project" means

(a) a project for airport development under the Airport and Airway Improvement Act of 1982;

(b) a project for airport planning under such Act;

(c) a project for terminal development described in section 513(b) of such Act;

(d) a project for airport noise capability planning under section 103(b) of the Aviation Safety and Noise Abatement Act of 1979;

(e) a project to carry out noise compatibility measures which are eligible for assistance under section 104 of the Aviation Safety and Noise Abatement Act of 1979 without regard to whether or not a program has been approved for such measures such section section; and

(f) a project for construction of gates and related areas at which passengers are enplaned or deplaned.

SEC. 402. AUTHORIZATION FOR IMPOSITION.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513), as amended, is further amended by the addition of a new subsection:

"(e) Exception for Imposition of Passenger Facility Charges.

"(1) Notwithstanding the above limitations the Secretary of Transportation is hereby authorized to establish by regulation a program for the imposition of approved passenger facility charges by any airport proprietor to finance eligible projects.

"(2) Passenger facility charges shall be imposed only as approved by the Secretary of Transportation and shall be approved only in full dollar amounts not to exceed three dollars per passenger. They shall remain in effect only during such periods as are necessary to pay for such specific projects as are identified to support their imposition.

"(3) Passenger facility charges shall be collected only from revenue passengers originating their travel at the airport imposing such a charge.

"(4) No proposal for the imposition of a passenger facility charge shall be approved by the Secretary of Transportation unless:

"(a) The airport proprietor seeking to impose the Passenger Facility Charge certifies, in writing, that airport users and the general public have been provided with a minimum of seventy-five days advance notice of the proposal; a full and detailed description of the project intended to be financed; a detailed financial plan for full funding of the specific project; and an opportunity to meet with the airport proprietor to present their views. On the basis of such advance notification and information the airport proprietor shall solicit the approval or disapproval of the airport users and the general public and shall advise the Secretary of Transportation of any disagreements with the proposed imposition of a passenger facility charge and the reasons supporting such disagreement.

"(b) In the event that no disagreement is registered, the Secretary shall approve the passenger facility charge.

"(c) In the event that disagreement is registered with reference to a project otherwise eligible for funding under the provisions of the Airport and Airway Improvement Act of 1982, as amended, the Secretary shall approve such passenger facility charge unless the Secretary finds by substantial evidence it would not significantly benefit airport security, safety, noise mitigation, or capacity.

"(d) The Secretary shall establish, by appropriate rule, the procedures under which a disagreement is registered and an appeal heard under subsection (c).

"(e) In the event that disagreement is registered with reference to a project to build airport gates, the Secretary shall not approve such passenger facility charge unless he finds by substantial evidence that the project is justified by the need to increase capacity at the facility or facilities affected. Under no circumstances shall any gates constructed, improved, or repaired with passenger facility charges under this paragraph be subject to long-term leases for periods exceeding 10 years or to majority in interest clauses.

"(f) No other projects other than those defined in this title may be financed by a Passenger Facility Charge.

"(5) Any proposal to amend a project supported by an approved passenger facility charge necessitating an upward adjustment of project financing costs shall be treated as a new proposal for the imposition of a passenger facility charge and submitted for approval.

"(6) No passenger facility charge shall be approved for imposition prior to the adoption by regulation of a National Aviation Noise Policy in accordance with the provisions of Title III of this Act and, in no event, prior to such date at which the unobligated balance contained in the Airport and Airway Trust Fund is less than $4 billion.

"(7) Authority for the approval of any new passenger facility charge, or the modification of any existing charge, shall terminate in the event that appropriations fail to be made to fund at least ninety-five percent of each amount authorized for Facilities and Equipment, the Airport Improvement Program and the Research Engineering and Development programs of the Federal Aviation Administration during any fiscal year. Further, all authority to approve any passenger facility charge shall terminate at any time funds are spent from this Act except as authorized by this Act.

"(8)(a) Revenues derived from collection of a fee by an airport proprietor pursuant to this subsection shall not be treated as airport revenues for the purpose of establishing rates, fees and charges pursuant to any contract between such airport and an air carrier.

"(b) Except as otherwise provided in subparagraph (c) hereof, such airport shall not include the portion of the capital costs of any project paid for from such passenger facility charge revenues in the rate base, by means of depreciation, amortization or otherwise, in establishing fees, rates and charges for air carriers.

"(c) With respect to any project for terminal development, for gates and related area, or for any facility which is occupied or utilized by one or more air carriers on an exclusive or preferential basis, the rates, fees and charges payable by air carriers which use such facilities shall be no less than the rates, fees and charges paid by carriers using similar facilities at the airport which were not financed with revenues derived from collection of a fee pursuant to this subsection.

"(d) Except as provided in this subsection nothing contained in this Act shall be construed as endorsing or authorizing the unilateral abrogation, abridgement or alteration of any existing contract or lease provision in place at any airport.

"(9) Any passenger facility charge approved for imposition under this Act shall be collected by the air carrier or its agent selling such transportation and shall be paid to the airport imposing such a charge in accordance with regulations to be issued by the Secretary of Transportation. Such charge shall be separately identified on any ticket sold for such transportation as a local Passenger Facility Charge. The Secretary of Transportation shall provide by regulation for the full and complete compensation of air carriers based upon a uniform fee which reflects their average costs for their collection and handling costs out of the charges collected.

"(10) The Secretary of Transportation shall require that any airport imposing a passenger facility charge maintain the funds derived as a result in a separate and identifiable account which, for the purposes of this Act, shall be subject to the same record, audit and examination requirements imposed upon Airport Improvement Program revenues by section 518 of the Airport and Airway Improvement Act of 1982, as amended.

"(11) No state (or political subdivision thereof, including the commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more states) shall levy or collect any tax on or with respect to any commercial aircraft flight, or any activity or service on board such flight, if such flight neither takes off nor lands in such state or jurisdiction.

SEC. 403. SPONSOR ASSURANCES INCLUDING MINORITY AND SMALL BUSINESS PARTICIPATION.

Section 511(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2210) is amended by after the word title striking "," and inserting "or passenger facility charge project,".

SEC. 404. PERFORMANCE OF CONSTRUCTION WORK INCLUDING MINIMUM RATES OF WAGES AND VETERANS PREFERENCE.

Section 515 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2214) is amended—

(1) in subsection (a) by inserting "or passenger facility charge project" after "title";

(2) in subsection (b) by inserting "or passenger facility charge project" after "title";

(3) in subsection (c) by inserting "or passenger facility charge project" after "title".

TITLE V—PURCHASE, SALE, LEASE, AND OTHER TRANSFER OF SLOTS DEFINITIONS

SEC. 501. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration.

(2) "Air carriers" has the meaning given that term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

(3) "High density traffic airport" means the Kennedy International Airport, New York, New York; LaGuardia National Airport, New York, New York; O'Hare International Airport, Chicago, Illinois; or Washington National Airport, Washington, D.C.

(4) "New entrant carrier" means an air carrier, including a commuter operator, that holds fewer than 12 slots at the relevant airport.

(5) "Secretary" means the Secretary of Transportation.

(6) "Slot" means the operational authority to conduct one landing or takeoff operation, under instrument flight rules, each day during a specific period at an airport.

SEC. 502. (a) Notwithstanding the provisions of subpart S of part 93 of title 14, Code of Federal Regulations, no slot at any airport may be purchased, sold, leased, or otherwise transferred on or after July 12, 1990, except that—

(1) one slot may be exchanged for another slot if there is no other consideration associated with the exchange;

(2) slots may be transferred on or after July 12, 1990, as a part of an overall transfer of ownership of an air carrier or substantially all of its assets, or of substantially all assets related to a discrete operation of an air carrier;

(3) slots at a high density traffic airport may be transferred by an air carrier that prior to July 12, 1990, filed for, and as of the date of enactment of this Act is receiving, bankruptcy protection under title 11 of the United States Code, if such transfer is needed to effectuate the sale of assets of that air carrier; and

(4) slot leases entered into and approved by the Administrator prior to July 12, 1990, may continue or be extended until 18 months after the date of enactment of this Act.

(b) No rule, regulation, or order (other than an emergency order) may be issued by the Secretary or the Administrator relating to restrictions on aircraft operations at any high density traffic airport unless such rule, regulation, or order is consistent with the provisions of this Act.

SLOT ALLOCATIONS FOR NEW ENTRANT CARRIERS

SEC. 503(a) Not later than 60 days after the date of enactment of this Act, the Administrator shall by rule establish a pool of air carrier slots for new entrant carriers at each high density traffic airport.

(b) The rule referred to in subsection (a) shall include, but not be limited to, provisions to accomplish the following:

(1) The new entrant slots in the pool shall be in addition to slots at each such airport which are in existence on the date of enactment of this Act, and the number of such new entrant slots shall not increase the overall number of air carrier slots at such airport by more than 5 percent in excess of the number of such existing slots.

(2) New entrant slots shall be allocated in such a way that, to the maximum extent practicable, all new entrant carriers have an equal number of slots overall at such airport, including both new entrant slots and existing air carrier slots. No new entrant carrier shall receive a new entrant slot under this section which gives that carrier more than 12 slots overall at such airport.

(3) If new entrant slots remain unused after new entrant carriers have had an opportunity to obtain such slots, the remaining new entrant slots may be made available for use by air carriers only for the purpose of providing air service to communities that lost access to a high density airport as a result of changes to the essential air service program under the Act entitled "An Act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1990, and for other purposes", approved November 21, 1989 (Public Law 101-164; 103 Stat. 1969).

(4) If new entrant slots remain unused after new entrant carriers have had an opportunity to obtain slots and air carriers have had an opportunity to obtain slots under paragraph (3), the remaining new entrant slots shall be allocated as needed for international operations authorized after the date of enactment of this Act, except for any such operation authorized under section 401(h) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371(h)).

(5) Each new entrant slot shall be public property and its use shall represent a nonpermanent operating privilege within the exclusive control and jurisdiction of the Secretary and the Administrator. Any such privilege may be withdrawn, recalled, or reallocated by the Secretary for reasons of aviation safety, airspace efficiency, the enhancement of competition in air transportation, or any other matter in the public interest and in accordance with the public convenience and necessity.

(6) If the holder of a new entrant slot, including a slot made available under paragraph (3), fails to initiate use of the slot within 60 days after receiving the slot or thereafter fails to use the slot in accordance with rules for use of existing air carrier slots, the new entrant slot shall be withdrawn and, if appropriate, be reallocated to another new entrant carrier. In addition to such grounds for withdrawal, a new entrant slot made available under paragraph (3) shall also be withdrawn and reallocated, in accordance with this subsection, if the holder fails to use the slot in providing air service as described in paragraph (3).

(c)(1) Section 6005(c)(5)(C) of the Metropolitan Washington Airports Act of 1986 (49 App. U.S.C. 2454(c)(5)(C) is amended by inserting ", except as provided in the Airline Competition Equity Act of 1990," immediately after "of this Act".

(2) Section 6009(e)(1) of the Metropolitan Washington Airports Act of 1986 (49 App. U.S.C. 2458(e)(1)) is amended by inserting ", except as provided in the Airline Equity Competition Act of 1990," immediately after "this title".

HIGH DENSITY TRAFFIC AIRPORT RULES

SEC. 504. (a) The provisions of subpart K of part 93 of title 14, Code of Federal Regulations, and of the rule referred to in section 5(a) of this Act shall cease to have force and effect on and after the date that is 18 months following the date of enactment of this Act.

(b) If after such provisions cease to be effective the Secretary of the Administrator decides to issue a new rule, regulation, or order providing for the allocation of slots at any airport, such rule, regulation, order, or other procedure shall not be issued until the Administrator certifies, after notice and opportunity for public comment, in a report to Congress that—

(1) such a rule, regulation, order, or other procedure is required in the interest of aviation safety; and,

(2) there is no alternative means for achieving comparable safety which has a less adverse effect upon competition in air transportation at such airport.

(c) Any such rule, regulation, order, or other procedure issued in accordance with subsection (b) shall be airport-specific unless the Administrator certifies that the aviation safety sought cannot be achieved without making the rule, regulation, order, or other procedure applicable to more than one airport.

(d) The Secretary is directed—

(1) to study and determine the extent to which shuttle service presently provided by air carriers operating between LaGuardia National Airport and Boston, and between LaGuardia National Airport and Washington National Airport, is of significant public interest to the unique megalopolis of the northeastern United States; and

(2) to report to Congress within 12 months after the date of enactment of this Act on the results of such study, along with such recommendations as the Secretary determines appropriate.

TITLE VI

SEC. 601. UNIVERSITY AIR TRANSPORTATION CENTERS.

(a) UNIVERSITY AIR TRANSPORTATION CENTERS.—

(1) GRANTS FOR ESTABLISHMENT AND OPERATION.—The Administrator of the Federal Aviation Administration (hereinafter referred to as the "Administrator") is authorized to make grants to one or more nonprofit institutions of higher learning to establish and operate one university air transportation center in each of the ten Federal regions which comprise the Standard Federal Regional Boundary System.

(2) RESPONSIBILITIES.—The responsibilities of each university air transportation center established under the subsection shall include, but not be limited to, the conduct of research concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system, and the interpretation, publication, and dissemination of the results of such research.

(3) APPLICATION.—Any nonprofit institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The extent to which the needs of the State in which the applicant is located are representative of the needs of the Federal region for improved air transportation services and facilities.

(B) The demonstrated research and extension resources available to the applicant for carrying out this subsection.

(C) The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

(D) The extent to which the applicant has an established air transportation program.

(E) The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

(G) The projects which the applicant proposes to carry out under the grant.

(5) MAINTENANCE OF EFFORT.—No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expeditures from all other sources for establishing and operating a university air transportation center and

related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operatring the university air transportation center and related research activities carried out by the grant recipient.

(7) RESEARCH ADVISORY COMMITTEE.—

(A) Sec. 312(f)(2) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(2) is amended by adding at the end of the following new sentence: "In addition, the committee shall coordinate the research and training to be carried out by the university air transportation centers established under the University Air Transportation Centers Act, disseminate the results of such research, act as a clearinghouse between such centers and the air transportation industry, and review and evaluate programs carried out by such centers.".

(B) Sec. 312(f)(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(3) is amended by striking "20" and inserting in lieu thereof "30"; and by striking the last sentence and inserting in lieu thereof the following: "The Administrator in appointing the members of the committee shall ensure that the university air transportation centers, universities, corporations, associations, consumers, and other government agencies are represented.".

(b) AUTHORITY.—Section 312(c) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(c)) is amended by inserting immediately after the third sentence the following: "The Administrator shall undertake or supervise research programs concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system.".

TITLE VII—MISCELLANEOUS

SEC. 701. SEVERABILITY.

If any provision of this Act (including an amendment made by this Act), or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 702. AUXILIARY FLIGHT SERVICE STATION PROGRAM.

(a) GENERAL RULE.—The Secretary of Transportation shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enacatment of this Act, the Secretary of Transportation shall report to Congress with the plan and schedule for implementation of this section.

SEC. 703. MILITARY AIRPORT PROGRAM.

(a) DECLARATION OF POLICY.—Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a) is further amended—

(1) by striking "and" at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting ";and"; and

(3) by adding at the end the following:

"(14) special emphasis should be placed on the conversion of appropriate former military air bases to civil use and on the identification and improvement of additional joint-use facilities.".

(b) SET-ASIDE.—Section 508(d) of such Act (49 U.S.C. App. 2204(d) is amended by striking paragraph (5) and inserting the following:

"(5) MILITARY AIRPORT SET-ASIDE.—Not less than one half of one percent of the funds made available under section 505 in each of fiscal years 1991 and 1992 shall be distributed during such fiscal year to sponsors of current of former military airports designated by the Secretary under subsection (f) for the purpose of developing current and former military airports to improve the capacity of the national air transportation system.

"(6) REALLOCATION.—If the Secretary determines that he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), (4), or (5) of this subsection for any fiscal year becasue the number of qualified applications submitted in compliance with this title is insufficient to meet such amount, the portion of such amount the Secretary determines will not be distributed shall be available for obligation during such fiscal year for other airports and for other purposes authorized by section 505 of this title.".

(c) DESIGNATION OF FORMER MILITARY AIRPORTS.—Section 508 of such Act is further amended by adding at the end the following new subsection:

"(f) DESIGNATION OF CURRENT OR FORMER MILITARY AIRPORTS.—

"(1) DESIGNATION.—The Secretary shall designate not more than 5 current or former military airports for participation in the grant program established under subsection (d)(5) and this subsection. At least 2 such airports shall be designated within 6 months after the date of the enactment of this subsection and the remaining airports shall be designated for participation no later than September 30, 1992.

"(2) SURVEY.—The Secretary shall conduct a survey of current and former military airports to identify which ones have the greatest potential to improve the capacity of the national air transportation system. The survey shall also identify the capital development needs of such airports in order to make them part of the national air transportation system and shall identify which capital development needs are eligible for grants under section 505. The survey shall be completed by September 30, 1991.

"(3) LIMITATION.—In selecting airports for participation in the program established under subsection (d)(5) and this subsection and in conducting the survey under paragraph (2), the Secretary shall consider only those current or former military airports whose conversion in whole or in part to civilian commercial or reliever airport as part of the national air transportation system would enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

"(4) PERIOD OF ELIGIBILITY.—An airport designated by the Secretary under this subsection shall remain eligible to participate in the program under subsection (d)(5) and this subsection for the 5 fiscal years following such designation. An airport that does not attain a level of enplaned passengers during such 5 fiscal year period which qualifies it as a small hub airport as defined as of January 1, 1990, or reliever airport may be redesignated by the Secretary for participation in the program for such additional fiscal years as may be determined by the Secretary.

"(5) ADDITIONAL FUNDING.—Notwithstanding the provisions of section 513(b), not to exceed $3,000,000 per airport of the sums to be distributed at the discretion of the Secretary under section 507(c) for any fiscal year may be used by the sponsor of a current or former military airport designated by the Secretary under this subsection for construction, improvement, or repair of terminal building facilities, including terminal gates used by aircraft for enplaning and deplaning revenue passengers. Under no circumstances shall any gates constructed, improved, or repaired with Federal funding under this paragraph be subject to long-term leases for periods exceeding 10 years or majority in interest clauses.".

SEC. 704. EXPANDED EAST COAST PLAN.

(a) ENVIRONMENTAL IMPACT STATEMENT.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(b) AIR SAFETY INVESTIGATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall conduct an investigation to determine the effects on air safety of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a report containing the results of the environmental impact statement and investigation conducted pursuant to this section. Such report shall also contain such recommendations for modification of the Expanded East Coast Plan as the Administrator considers appropriate or an explanation of why modification of such plan is not appropriate.

(d) IMPLEMENTATION OF MODIFICATIONS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall implement modifications to the Expanded East Coast Plan recommended under subsection (c).

SEC. 705. DECLARATION OF POLICY.

Section 502(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2201) is amended—

(1) in paragraph (5) by inserting ", including as they may be applied between category and class of aircraft" after "discriminatory practices"; and

(2) in paragraph (13) by inserting "and should not unjustly discriminate between categories and classes of aircraft" after "attempted".

SEC. 706. AIRLINE MERGER.

(a) IN GENERAL.—Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

SEC. 420. (a) In the event that the purchase, or acquisition of control in any manner of an air carrier by an air carrier or

any person controlling an air carrier affects the seniority rights of the carriers' flight deck crew-members, the affected employees, notwithstanding any other provision of law, shall be afforded the protections and procedures provided by the Civil Aeronautics Board in the Tiger International—Seaboard Acquisition Case, CAB Docket 33712, to ensure that seniority lists are integrated in a fair and equitable manner.

(b) On complaint by any flight deck employee or by the representative of any group of the flight deck employees affected by the transaction, the United States District Court for the district in which the complainant resides or has its principal place of business or for the District of Columbia, shall have jurisdiction to enforce the labor protective provisions specified in subsection (a). The fact that there may be pending a representation dispute before the National Mediation Board shall not deprive the court of jurisdiction.

SEC. 707. TRANSFER OF AVIATION SAFETY FUNCTIONS BACK TO FEDERAL AVIATION ADMINISTRATION.

There are hereby transferred to and vested exclusively in the Administrator of the Federal Aviation Administration the following functions, powers, and duties of the Secretary of Transportation:

(a) Those specified in Section 106(g) of Title 49 of the United States Code, and

(b) Sections 315, 316, and 317 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1356, 1357, and 1358).

Section 2.

The Administrator shall not submit decisions rendered under the authority of the provisions cited in Section 1 for the approval of, nor be bound by the decisions or recommendations of, the Secretary or any committee, board, or other organization created by Executive Order.

Section 3.

In exercising the functions, powers and duties enumerated in Section 1, the Administrator shall be guided by the declaration of policy in Section 103 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. app. 1303.

Section 708. Section 401(h) of the Federal Aviation Act of 1958, as amended (49 App. U.S.C. 1371(h)) is amended.

(1) by redesignating the existing text as paragraph (1); and

(2) by adding at the end of the following new paragraph:

"(2) The Secretary of Transportation shall, upon any such transfer, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

"(3) For purposes of this subsection, a transfer of a certificate is consistent with the public interest if that transfer does not adversely affect:

(A) the viability of each of the carriers involved in the transfer;

(B) competition in the domestic airline industry, and

(C) the trade position of the United States in the international air transportation market.".

Section 1, the Administrator shall be guided by the declaration of policy in Section 103 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1303.

Mr. McCAIN. Mr. President, I am pleased to join the chairman of the Commerce Committee's Aviation Subcommittee in introducing the Aviation Capacity Act of 1990. I would like to take this opportunity to recognize his dedication to aviation and to congratulate him for his work on this piece of legislation.

It is no secret that I believe aviation is the key to economic success in the nineties and the next century. Ask virtually any Arizonan. I have been preaching about the need for my State to get moving in planning its aviation future. The same must be said for the Federal Government and, sadly to say, they have not.

While we, as a country, are facing numerous needs in the aviation arena, the Federal Government sits on nearly $8 billion in funds collected in the name of improving aviation. No major airport has been built since 1974, mainly as a result of local noise concerns. Modernization and expansion have fallen behind the more than doubling in the numbers of air travelers over the last decade, again, not because of a lack of funds but rather from a lack of leadership.

Leadership should and must come from the Federal Government in the field of aviation. I can think of few industries more intricately linked with interstate commerce than aviation. I believe this legislation provides the proper level of Federal leadership, and at the same time, encourages local initiative.

It will do us no good if we supply increased financial means to build more capacity if, at the same time, we allow capacity to be reduced, restricted, or even eliminated by a proliferation of shortsighted measures. The Aviation Capacity Act of 1990 calls for the proper balancing of local and national interests in determining and executing our Nation's aviation policy into the 21st century, as well as providing the means to achieve that policy.

In addition, this bill contains the contents of S. 2851, the Airline Competition Equity Act of 1990, which I introduced in July. This measure has been reported out of the Senate Commerce Committee and is awaiting action on the Senate floor. I believe S. 2851 fits naturally into this legislation. Slots constitute as egregious a restraint on capacity, as well as competition within the airline industry, as exists. If the Federal Government is to truly exercise leadership in the aviation arena, it must address this problem.

Once again, I would like to congratulate Senator FORD and I look forward to working with him as this legislation proceeds through the legislative process.

Mr. DANFORTH. Mr. President, I am pleased to cosponsor the Aviation Capacity Act of 1990. I congratulate Senator FORD for introducing this legislation, and I commend his hard work. This bill will provide a new revenue source for airport construction, the so-called passenger facility charge [PFC]; it will reform the slot system which is widely regarded as the airline industry's number one anticompetitive problem; and it will help clarify the issue of airlines selling assets they have received from the Federal Government for free.

PEC's are the single most important element in increasing the capacity of the Nation's airports. Local airports will gain the ability to impose user fees on the passenagers who use the airport. This will greatly expand the funding options for airport authorities trying to expand, such as Lambert Airport in St. Louis.

Slots, which are takeoff and landing rights at four airports—Washington National, New York Kennedy, New York LaGuardia, and Chicago O'Hare—were created in 1969 to ensure smooth traffic flow at these busy airports. However, slots have become monopoly rights which the major airlines use to keep out competitors. In addition, in 1985, the Federal Government allowed the airlines to sell or lease these public rights as if they were private property. The sale of these slots enrich the airlines at the expense of the public. The Aviation Capacity Act, includes the text of S. 2851, the Airline Competition Equity Act, which the Senate Commerce Committee favorably voted to report to the Senate on July 31. The failed policy of buying and selling public assets for private gain must be reformed.

In addition to slots, international routes are also Government-created assets which airlines may bank and then sell for profit, regardless of the sale's affect on the public. This bill will ensure that any sale or transfer of an international route will not adversely affect the viability of the carriers involved, will not harm competition, and will not harm the U.S. trade position.

By increasing funding, drawing down the aviation trust fund surplus, and addressing concerns about airline competition and the sale of Government-created assets, this bill lays the foundation for more efficient use of our aviation system, and increased competition in the airline industry. The end result will be large benefits in time and money to the traveling public.

By Mr. BINGAMAN (for himself, Mr. MITCHELL, Mr. KENNEDY, Mr. HARKIN, Mr. KERREY, and Mr. PELL):

S. 3095. A bill to authorize the creation of a National Education Report Card to be published annually to measure educational achievement of both students and schools and to establish a National Council on Educa-

tional Goals; to the Committee on Labor and Human Resources.

NATIONAL ACADEMIC ADVISORY REPORT CARD ACT OF 1990

● Mr. BINGAMAN. Mr. President, I rise today to introduce the National Academic Report Card Act of 1990.

Over the past decade, we have witnessed a growing concern about educational achievement in the United States. Improving the quality of education of American students has become a top priority of the Nation's Governors as well as the President of the United States. There has been an increasing acceptance that there needs to be a more sustained national effort if the quality of education offered to American students is to improve.

Last September, the President and the Governors met at an education summit in Charlottesville. They agreed upon six goals to be achieved by the year 2000: "All children will start school ready to learn" "Ninety percent of high school students will graduate." "All students will master basic skills." "U.S. students will be first in the world in science and mathematics achievement." "Every adult American will be literate." "Every school will be drug-free and safe." These are laudable goals, although there was minimal participation by parents and organizations that will be responsible for implementing programs to achieve these goals.

If there is to be wise public involvement in improving our schools, the public must have accurate and timely information about the progress being made toward meeting these goals. If we are to improve the quality of American education, there is no doubt that measuring student progress will play a critical role.

A joint statement issued at the summit stated, "When goals are set and strategies for achieving them are accepted, we must establish clear measures of performance and then issue annual report cards on the progress of students, schools, the States, and the Federal Government." Clearly, establishing national goals will have little meaning unless we are able to assess where we currently stand and to measure our progress in attaining these goals.

Last October and November, I chaired two Senate hearings of the Governmental Affairs Subcommittee on Government information and regulations on the quality and use of Federal information. The focus of the hearings was the availability and quality of national education data bases to provide appropriate measures to assess progress toward the broad goals set by the President and the Governors. One conclusion reached from the testimonies at those hearings, was that there were major problems with the scope, quality, comparability, and timeliness of data on educational performance currently available from the Department of Education.

There was and is no currently effective mechanism for measuring individual school performance relative to the established national education goals. It was clear that we needed more information about the quality of education as well as more information about the conditions under which education takes place and the conditions of children receiving that education. There is a need to establish effective and direct ways to measure progress toward the national education goals so that policy makers at the local, State, and the Federal levels can begin to effectively and substantively address the issue of improving the quality of American education. There was strong support from the witnesses for the establishment of an independent council of highly respected, bipartisan, diverse experts to develop a model assessment program for the Nation's education system and report periodically to the President and the Nation.

As a result of those hearings, in January of this year, I introduced the National Report Card Act of 1990. It established a National Council on Education composed of highly respected, bipartisan experts to study, evaluate, and report on the progress of the Nation's educational achievement, from preschool through postsecondary education.

Following an initial report analyzing existing information on the educational achievement of U.S. students and schools, the Council would issue annual report cards assessing U.S. educational attainment. Each report card would: First, assess progress toward the national goals; second, identify gaps in existing data and make recommendations for improving the methods of assessing educational attainment; and third, based on input from several sources involved in implementing the goals, make revisions in the strategies for achieving the national educational goals or identify new educational goals or objectives.

This past July the Governors and some of the President's advisers met in Mobile, AL. One of the accomplishments of this meeting was to establish the National Educational Goals Panel. This Panel is charged with overseeing the development and implementation of a national education progress reporting system. This Panel would develop and establish appropriate measures to assess progress toward the national education goals established last year in Charlottesville. Each year, the Panel will report the progress made toward these goals.

Unfortunately, the Governors and the President chose to ignore the need for an independent panel expressed at three earlier hearings discussed above. Instead, they set up a panel comprised of six Governors, four administration officials, and four ex-officio members of Congress—all political office holders. In effect, as the people responsible for making and implementing National and State educational policy, they have made arrangements so that they, and no one else, would be the judge of their own work. This would serve the purpose of shielding those who set the goals from any accountability for achieving these goals.

An additional concern is that the Panel cannot act on any proposal or statement unless 75 percent or 8 out of the 10 members agree. Another severely limiting factor in terms of carrying out the Panel's mission is that there is no budget for the Panel to conduct its business nor any mechanism for it to commission data collection, particularly any new data collection. The Department of Education has had the primary responsibility for collecting information on the condition and progress of education in the United States. However, the National Center for Education Statistics—the primary source for Federal data on American education—according to testimonies heard, has long been underfunded in comparison to other general purpose statistical agencies. In summary, the Governors and the President set up a second group—totally ignoring the concept developed in the Report Card Act—to monitor education progress, and this Panel is made up of political officials who will be monitoring their own achievement and do not have funding to carry out their mission.

This past July and September I chaired two Senate hearings of the Labor and Human Resources Subcommittee on Education both of which focused on the National Report Card Act of 1990. Three major conclusions from these hearings were: First, the need for a report card that would contain information about school indicators being used to achieve national goals; second, the general public should be meaningfully involved; and third, that there be an independent national council to monitor progress toward the national goals.

I believe that there is no issue of greater long-term consequences to our Nation's future than the performance of our educational system. I do not believe that two separate groups attempting to assess education progress will be of benefit to improving the education achievement of our students. It is to address this current state of affairs that I am introducing this new bill. There are three major substantive changes from the National Report Card Act of 1990.

Instead of two separate panels this bill will create a single council made up of education stakeholders, experts, and policymakers. In effect the two panels are combined without substan-

tially affecting the integrity of either panel nor the mission of the council.

Another change that would affect the collection of data, is a recommendation that after developing its long-range timetable, the council contract with NCES or any other entity, capable of generating and/or collecting the necessary data to appropriately assess the goals based on the Counci—'s recommendations. Most importantly, there is authorizing language for the necessary appropriations.

A third major change is the authorizing of matching funds for State summits of education. The council will include in its initial report on recommended indicators as well the subsequent annual reports an analysis of the State summit summaries submitted. The State summits are, I believe, vitally important to the success of the long-term national goals. Long-term commitment will come only from a large-scale consensus. The State summit reports will help generate meaningful grassroots discussion about the national goals and will help the council evaluate the level of local and State commitment to investing in strategies for improving schools. Funding ongoing grassroots deliberations will help keep public momentum behind the process.

I believe this bill to be a substantial improvement on my earlier bill and a substantial improvement on the Panel set up by the President and the Governors. It is a good compromise and will avoid the schism in educational policy at the national level that will ultimately frustrate efforts to achieving the national goals. If this Nation is to improve the quality of education offered to our students and to improve the quality of our work force it is of the utmost importance that we pay close attention to monitoring and measuring student progress and that we sustain this effort over a long period of time. This bill will set up a monitoring and measuring infrastructure for education that will have a broad base of participation. I urge your consideration and support of this bill.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3095

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This bill may be cited as the "National Academic Advisory Report Card Act of 1990".

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

SEC. 3. FINDINGS.

The Congress finds that—

(1) the social well-being, economic stability, and national security of the United States depend upon a strong educational system that provides all citizens with the skills necessary to become active members of a productive workforce;

(2) despite the many reforms to our educational system that have been implemented since the National Council on Excellence in Education declared our Nation "at risk" in 1983, the United States remains at risk of educational failure;

(3) United States children and youth are leaving school unprepared to participate productively in the workforce, such children suffer high rates of functional illiteracy, and such children often display a lack of understanding about this Nation and the world, in both an historical and futuristic context;

(4) United States students currently rank far below students of many other countries in educational achievement, particularly in mathematics and the sciences;

(5) although States and localities bear the primary responsibility for elementary and secondary education, rapidly increasing international competitiveness that we increase our efforts in making education a national priority.

(6) the Federal Government has played a vital, leading role in funding important educational programs and research activities and should continue to do so;

(7) accurate and reliable mechanisms must be available to assess and monitor educational progress;

(8) many schools have shown considerable progress and success in improving achievement, including model schools, and those schools which have implemented innovative approaches to school structure;

(9) the mechanisms to assess and monitor educational progress, and the national information infrastructure needed to support those mechanisms, either do not exist or must be strengthened;

(10) many factors contribute to a school's performance including school finance, resources, teaching conditions and parental involvement, which should be included, along with educational achievement, in reports on school performance.

(11) there should be established an independent council of highly respected, bipartisan, diverse experts to study, make recommendations regarding, and monitor the progress on meeting national goals for education and make recommendations on the nation's educational assessment and information system; and

(12) to the council described in paragraph (11) should have the authority to—

(A) make such recommendations as such council deems necessary to the President, the Congress, and the States, and

(B) issue annual reports in the form of a "national report card".

SEC. 4. ESTABLISHMENT.

There is established a National Council on Educational Goals (hereinafter referred to as the "Council").

(a) COUNCIL MEMBERS—The Council shall consist of 18 members, of whom—

(1) 2 members shall be appointed by the President, and 6 members, equally bi-partisan, selected by the chair of the National Governors Association in consultation with the Vice-Chair from among the Governors of the States or from the individuals described in Section 4(b) hereof.

(2) 5 members shall be appointed by the Speaker of the House of Representatives in consultation with the Minority leader of the House of Representatives; and 5 members shall be appointed by the President Pro Tempore of the Senate upon the recommendation of the Majority Leader and Minority Leader of the Senate.

(b) APPOINTMENT—(1) The Members of the Council described in Section 4(a)(2) shall be appointed on the basis of:

(i) their widely recognized experience in, knowkedge of, and commitment to education and educational excellence; or

(ii) training or experience in analyzing educational data.

(iii) Members shall not include elected public officials at the state or federal level, they may include and are not limited to:

(A) individuals who are engaged in the professions of teaching and research;

(B) individuals engaged in school administration, members of school boards, parents or representives of parents or parent organizations with experience in analyzing school performance data;

(C) individuals who are state non-elected officials including research and development officers (especially those specializing in work concerned with state report card indicators) and chief state school officers; as well as

(D) individuals who are representatives of non-profit organizations or foundations and businesses who have demonstrated a commitment to the improvement of American education.

(2)(a) The representatives chosen by the President shall have their terms designated either four or six years by the President at time of appointment.

(b) The Speaker of the House shall designate appointees for one six-year, one four-year, and one two-year term. The Minority Leader shall designate appointees for one two-year and one four-year term.

(c) The President Pro Tempore of the Senate in consultation with the Majority leader shall designate appointees for one six-year, one four-year term, and one two-year term. The President Pro Tempore of the Senate in consultation with the Minority Leader shall designate appointees for one two-year and one four-year term.

(d) The Chair and the Vice Chair of the National Governors Association shall each designate appointees for one six-year, one four-year, and one two-year term.

(3) The first 18 members of the Council shall be appointed no later than 60 days after the date of enactment of the Act.

(4) Council members, in order to retain their appointment must attend at least 50% of the scheduled meetings in any given year of their appointment.

(c) CHAIR.—The Council shall have a chairman, who, (i) for the first year of the Council's existence, shall be selected from and by the members appointed by the Chair of the National Governors' Association, and (ii) thereafter, shall be selected by a majority of the voting members of the Council from the members described in section 4(b) hereof. However, if no one described in clause (i) assumes the Chair of the Council within 60 days of the enactment of this Act,

a Chair shall be selected pursuant to clause (ii) of this paragraph.

(d) VACANCIES.—A vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(e) MEMBERSHIP DURATION.—Members of the Council shall be appointed to serve for either two, four, or six year terms.

(f) COMPENSATION AND TRAVEL.—Each member of the Council shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Council duties.

(g) START-UP.—The Council may begin to carry out its duties under this Act when either at least 9 members of the Council have been appointed or 6 of the members described in section 4(b) have been appointed.

SEC. 5 FUNCTIONS.

(a) FUNCTIONS.—The Council shall—

(1) compile, inventory, and analyze existing information regarding the educational achievement of United States students and schools, including public and private elementary, secondary, and post-secondary schools;

(2) monitor, and report progress on meeting the national goals and objectives of these same goals, using appropriate and agreed upon indicators;

(3) identify the information that would best advise the public about the state of our schools, develop consensus about the indicators on which data will be collected and analyzed for the Report Card, identify data bases that provide the needed information, establish benchmarks necessary to meet the long-term national goals in the year 2000, and make recommendations about additional data that will be needed; and

(4) through the interim Council report described in section 7 and the annual report card described in section 8, identify gaps in existing educational data and make recommendations for improvements in the methods and procedures of assessing attainment or realization of goals by the Department of Education and any other Federal governmental entity, including suggestions for such changes in laws and regulations as may be required to improve the assessment process, procedures, and organization of the Federal Government, through information obtained in the hearing process set forth under section 9, develop recommendations regarding federal, state, and local policymaking for meeting the national goals.

(b) PERFORMANCE OF FUNCTIONS.—In carrying out the provisions of subsection (a)(2) the Council shall—

(1) consider the goals already set forth or recommended by the National Education Summit and other governmental and nongovernmental organizations;

(2) consider the goals of the states developed through the States' Summits described in Section 12;

(3) report on the progress toward achieving the goals at the national level including appropriate comparisons of the educational achievement of the United States with other nations' and

(4) consider relevant data that affect student performance, in at least the following areas:

(A) school readiness,

(B) student achievement in elementary, secondary, and post-secondary education,

(C) school financing and equalization

(D) the degree and quality of parental involvement

(E) availability of instructional resources

(F) the degree of involvement of social service agencies

(G) school and student performance, including—

(i) attendance and completion rates;

(ii) climate (vandalism, crime, and drugs);

(iii) conditions of teaching including salary and professional development training;

(iv) parent participation; and

(v) school financing;

(H) workforce literacy and skills.

(5) report on progress comparing skill attainment or progress within similar bands of school resources

(6) consider alternative assessment instruments emphasizing mastery over skill areas rather than specific information.

(c) DATA COLLECTION.—Upon development of its long-range timetable, the Council shall contract with NCES or any other entity, capable of generating and/or collecting the necessary data to appropriately assess the goals based on the recommendations of the Council.

SEC. 6. INTERIM COUNCIL REPORT.

Not later than 1 year after the Council concludes its first meeting of members, the Council shall submit a report to the President, the Congress, the National Panel and the Governor of each State, that—

(1) establish a timetable for reporting on progress toward achieving national education goals for the year 2000.

(2) includes a series of reasonable steps for measuring the implementation and success of each recommendation of the Council.

SEC. 7. ANNUAL REPORT CARD.

(a) IN GENERAL.—Not later than 2 years after the Council concludes its first meeting of members, the Council shall submit to the President, the Congress and the Governor of each State a National Report Card, which—

(1) shall set forth an analysis of the Nation's progress toward achieving the national education goals;

(2) may, as deemed necessary by the Council based on its findings and an analysis of the views and comments of all interested parties, including the National Summit on Education and the State Summits, as well as all relevant Federal entities, the National Governor's Association, the Congress, and private organizations and citizens—

(A) describe modifications to existing goals,

(B) identify continuing gaps in existing educational data, and

(C) make recommendations for improvement in the methods and procedures of assessing educational attainment and strengthening the national educational assessment and information system by the Department of Education or any other appropriate Federal government entity.

(b) CONTINUATION.—Based on the timetable established in Section 7, the Council shall continue to issue a National Report Card on an annual basis for the duration of the existence of the Council. Such reports shall be presented in a form that is understandable to parents and the general public.

SEC. 8. POWERS OF THE COUNCIL.

(a) HEARINGS.—(1) The Council may, for the purpose of carrying out this Act, conduct such hearings, sit and act at such times and places, take such testimony and receive such evidence, as the Council considers appropriate.

(2) In carrying out this subsection the Council shall—

(A) conduct public hearings in different geographic areas of the country, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public on the status and goals of the Nation's current educational system, the need to redefine and redirect educational goals, policy recommendations for pursuing the goals at the federal, state, and local levels, and methods that could be implemented to foster higher levels of educational attainment in our Nation's schools; and

(B) receive testimony from—

(i) individuals such as practicing educators, parents, business persons, elected and appointed public officials; and

(ii) representatives of public and private organizations and institutions with an expertise or interest in improving the quality of the Nation's educational system.

(b) INFORMATION.—The Council may secure directly from any Federal agency such information as may be necessary to enable the Council to carry out this Act. Upon request of the Chairman of the Council, the head of the agency shall furnish such information to the Council.

(c) GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(d) POSTAL SERVICES.—The Council may use the United States mail in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) ADMINISTRATIVE AND SUPPORTIVE SERVICES.—The Administrator of General Services Administration shall provide to the Council on a reimbursable basis such administrative and support service as the Council may request.

SEC. 9. ADMINISTRATIVE PROVISIONS.

(a) MEETINGS.—The Council shall meet on a regular basis, as necessary, at the call of the Chairman or a majority of its members.

(b) QUORUM.—50 percent of all members of the Council who have been appointed shall constitute a quorum for the transaction of business.

(c) VOTING.—All action of the Council shall be taken by a majority of the members attending a duly called and constituted meeting of the Council. No proxies will be allowed to vote.

(d) COUNCIL STAFF.—(1) subject to section 4(c), above. The Chairman and Vice Chairman of the Council shall be elected by and from the voting members of the Council and shall serve in their elected capacity until the expiration of their appointed terms as members, or until their resignation or removal by a majority of the voting members of the Council.

(2) The Chairman of the Council, in consultation with the Vice Chairman, shall appoint and fix the compensation of a staff administrator and such support personnel as may be reasonable and necessary to enable the Council to carry out its functions without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates.

(d) PERSONNEL DETAIL AUTHORIZED.—Upon request of the Chairman of the Council, the head of any Federal agency is authorized to detail, without reimbursement, any of the

personnel of such agency to the Council to assist the Council in carrying out its duties under the Act. Such detail shall be without interruption or loss of civil service status or privilege.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) Except for State Summits, there are authorized to be appropriated $2 million for the fiscal year 1991 and such sums as may be necessary for the fiscal year 1992 through 2000 to carry out the provisions of this title.

(b) To carry out the provisions of Section 12 with respect to the State Summits on education, there are authorized to be appropriated $5 million for the fiscal year 1991 and such sums as may be necessary for the fiscal years 1992 through 2000.

SEC. 11. STATE SUMMITS ON EDUCATION.

From amounts authorized under section 11(b), the Secretary shall make grants to the states to conduct State Summits on education or help support the implementation of plans adopted from said summits—

(i) States shall apply to the Secretary for such grants;

(ii) The Federal share shall be no more than 50 percent;

(iii) States, shall upon completion of the State Summit submit a report to the Council on—

(a) the State's goals for education, including changes or additions to the national goals.

(b) a plan for meeting the State's goals and a timetable for carrying out the plan.

(c) a plan for evaluating the State's progress in meeting its goals according to its timetable.●

By Mr. DASCHLE (for himself, Mr. CONRAD, Mr. BAUCUS, Mr. BURDICK, Mr. KERREY, and Mr. EXON):

S. 3098. A bill to permit producers to store excess wheat in the producer reserve program for the 1990 crop of wheat, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PRODUCER RESERVE PROGRAM FOR 1990 CROP OF WHEAT

● Mr. DASCHLE. Mr. President, I rise today to introduce legislation that will help relieve the financial hardships currently facing our Nation's wheat farmers. The legislation will require the U.S. Department of Agriculture to allow producers to place up to 15,000 bushels of their 1990 wheat crop into the Farmer Owned Reserve Storage Program.

This action is desperately needed because of the current state of the wheat market. As a result of actions taken by the administration and favorable harvest conditions in most of the wheat producing regions of the world, wheat prices in the United States are at their lowest level since 1972 in nominal terms and at their lowest level this century in real terms. In parts of South Dakota winter wheat is selling for less than $2 per bushel.

At this price many producers face the prospect of big losses on their 1990 production. The reserve program exists to be used in just these circumstances. Producers should be allowed the opportunity to store some of their grain and wait for better marketing opportunities. In this way wheat growers will not be forced into taking an immediate loss and can have some hope of getting a decent return on their production. Also, it is vital to food security and maintaining stable prices for consumers that the government maintain adequate stock levels of basic commodities such as wheat. Currently the producer reserve is at a dangerously low level from this perspective.

The administration's decisions to initially keep the 1990 wheat ARP at only 5 percent and then to allow producers to over-plant their bases by 5 percent has resulted in surplus production overhanging the market. These are many actions that the administration could be taken to alleviate this situation. Following passage in the Senate legislation to mandate a 15 percent ARP for the 1991 crop, I am pleased that USDA has now announced a 15-percent ARP for the new crop year.

Aside from this announcement, there has been little evidence of action by the administration. USDA has the authority to reopen the producer reserve program, but has failed to do so. Together with several of my Senate colleagues, I have written to Secretary Yeutter urging him to take this action and additional measures. I am introducing this legislation today to signal to the administration that the Congress is serious about providing relief to our wheat farmers. If the administration fails to open the reserve, I shall push for swift final passage of this legislation, forcing the opening of the reserve to producers

Mr. President, I am pleased to have Senators CONRAD, BAUCUS, BURDICK, KERREY, and EXON as cosponsors of this legislation. Each Senator comes from a wheat producing State, and their support of this legislation indicates the critical need for swift action on this issue. I would urge all of my colleagues to support this effort if the administration fails to exercise their existing statutory authorities.●

By Mr. SIMPSON:

S. 3099. A bill to amend the Immigration and Nationality Act to strengthen provisions added by the Immigration Reform and Control Act of 1986; to the Committee on the Judiciary.

IRCA IMPROVEMENTS AMENDMENTS

Mr. SIMPSON. Mr. President, I rise today to introduce legislation which will assist us in the battle against illegal immigration.

In 1986, Congress passed the Immigration Reform and Control Act [IRCA]. Two of its central features were critical to the goal of controlling illegal immigration: First, penalties against employers who knowingly hire illegal aliens, employer sanctions; and second, an increase in border patrol personnel levels.

In fiscal year 1986, the INS made 1.6 million apprehensions of illegal aliens on our Southern border. In fiscal year 1987, after IRCA was enacted, the number of apprehensions fell to just over 1 million. In fiscal year 1988, apprehensions fell to 943,000, and in fiscal year 1989, apprehensions fell again to 854,000.

Unfortunately, this positive trend has reversed itself. Southern border apprehensions for fiscal year 1990 are up 25 percent. If present trends continue—and the the border patrol predicts that they surely will—apprehensions will reach 1,060,000 by the end of this fiscal year.

In addition, drug smugglers have taken increasing advantage of the illegal flow of people on our Southern border in order to smuggle controlled substances into our country. In fiscal year 1985, the INS seized $120 million worth of drugs on the Southern border while performing its routine border control duties. In fiscal year 1986, that dollar amount increased to $185 million. In every year thereafter, the value of drugs seized on the Southern border has increased: $582 million in fiscal year 1987; $700 million in fiscal year 1988, and $1.19 billion in fiscal year 1989. For fiscal year 1990 so far, it appears as if over $1 billion worth of drug apprehensions will again be made.

These are very disturbing trends, Mr. President, and I believe they now warrant additional congressional and administration efforts to control illegal immigration.

Therefore, I am today introducing legislation which would do the following: First, educate employers about their responsibility to comply with the employer sanctions law—as well as to observe carefully our Nation's antidiscrimination rules; second, require the Immigration Service to construct new barriers or upgrade existing barriers at key points where large numbers of illegal aliens attempt to cross our Southern border; third, require the States to improve the security of their drivers' licenses, and then direct that drivers' licenses—or State ID cards for those who do not drive—and alien identification cards will be the sole documents acceptable to prove employment eligibility; fourth, create a system of civil fines to deter users of fraudulent documents; and fifth, require the executive branch to report to Congress each year on the levels of illegal immigration and what additional efforts might be taken to reduce them.

It is with great concern that I announce these figures on illegal entries and drug traffic along our borders. I strongly feel that these measures to: First, improve the worker verification

system which supports employer sanctions; and second, to improve our traditional enforcement measures, are necessary to reverse this trend.

Until we are able to seriously improve the situation at our Southern border, I have come to believe that it is not wise or proper to increase our levels of legal immigration. As Father Theodore "Ted" Hesburgh, Chairman of the Select Commission on Immigration and Refugee Policy noted, we should close the back door to illegal immigration and open "the front door a little more to accommodate legal migration in the interests of this country." We must face the fact that we have not yet closed that back door. In fact, we are still leaving the back door open while considering prying open the front door much wider.

When I cosponsored the Senate legal immigration bill, S. 358, in February of 1989, illegal immigration levels were the lowest they had been in many years, and the trend in apprehensions of illegal aliens was noticeably downward. Therefore, when S. 358 raised legal immigration levels from 500,000 per year to 630,000 per year, I felt such an increase was justified because the back door flow of illegal immigration had been substantially reduced.

Now today we are observing a different situation at the Southern border. With apprehensions likely to exceed 1 million persons during this fiscal year, I am no longer comfortable with increasing our legal immigration levels by over 25 percent.

I am introducing this legislation today because I believe it will attack the two greatest weaknesses in our current enforcement efforts: First, the large number of false documents that now exist which can be used to fraudulently satisfy the employment authorization requirement of employer sanctions; and second, the few and dilapidated physical barriers that now exist on our Southern border which were originally installed to deter illegal entrants.

If this legislation is approved before or concurrently with legal immigration legislation, then I can feel justified in continuing to support a legal immigration level of up to 630,000 immigrants per year. However, if this legislation is not approved, then I just do not believe it would presently be in the national interest to approve of the increases in legal immigration that are now contemplated by proposed reform legislation.

Mr. President, I commend this legislation to my colleagues, and I encourage them to actively support it.

By Mr. HOLLINGS (for himself and Mr. BRYAN):

S. 3101. A bill to amend the Foreign Agents Registration Act of 1938 to strengthen the registration and enforcement requirements of that Act, and to amend title 18, United States Code, to limit the representation or advising of foreign persons by certain Federal civilian and military personnel, and for other purposes; to the Committee on the Judiciary.

FOREIGN REPRESENTATION ACT

Mr. HOLLINGS. Mr. President, today I am introducing a bill, the Foreign Representation Act of 1990, which amends both the Foreign Agent Registration Act enacted in 1938, and the Ethics in Government Act, enacted in 1989.

Great changes are taking place around the globe. Democratic principles are sprouting in Eastern Europe and the Soviet Union. As the world moves away from the "cold war," we find ourselves playing a new game: the "trade war." It is a no-holds-barred struggle among nations for market share and standard of living in a largely zero-sum world market place. To date, not only is the United States losing this new contest, we still haven't the foggiest idea how the game is played. Rather than mobilize for the challenge of government-controlled capitalism or trade war, recent administrations have opted for the equivalent of unilateral disarmament.

Let's be clear where America stands 4½ decades after World War II. The United States has gone from the world's largest creditor to world's fattest debtor in just 8 years. After running trade surpluses from 1945 through 1970, and as late as 1975, our trade deficits in the 1980's totalled almost $900 billion. This stunning economic reversal was America's dutiful sacrifice on the altar of free trade.

Well, now in the post-cold war era, our economic security is part and parcel of the national security. If anyone doubts this, you need look no farther than the Persian Gulf. If economic interests are to be elevated to the same national priority as defense and foreign policy, then we must take a fresh look at the laws governing those who represent foreign governments and foreign companies on trade and economic issues.

First, we must strive to ensure that foreign lobbyists comply with the Foreign Agents Registration Act, or FARA. FARA was enacted in 1938 and was primarily designed to deal with propaganda spread by Nazi agents before World War II. The purpose of the act was to focus "the spotlight of pitiless publicity" on the activities of foreign agents. Or, as the Congressional Research Service put it, quoting from verse 32 of chapter 8 of the Book of John:

> Ye shall know the truth, and the truth shall make you free.

FARA is a disclosure statute requiring foreign agents to file a registration statement with the Department of Justice. However, there are exemptions to the act and both the Congressional Research Service and the General Accounting Office have done exhaustive studies of FARA and have recommended a number of changes to FARA to increase compliance. While it is very difficult to say with any certainty, some experts have suggested that as many as 60 percent of foreign agents have not registered under FARA. If this statute is to be effective, it must be amended to encourage and require filing by all persons covered by the act. Therefore to that end, title I of the bill I am introducing today would make five changes in the act.

1. DEFINITIONAL CHANGES

The CRS report noted that the stigma attached to registering as a foreign agent is a significant obstacle to voluntary compliance. Other commentators have also recognized the stigma problem. The bill would therefore change the words "foreign agent" to "foreign representative" and "propaganda" to "promotional material" where they appear in the act, as suggested by CRS.

2. FOREIGN-OWNED U.S. COMPANIES

One murky area in the application of FARA is the definition of "foreign principlal." The question that has arisen is whether foreign-owned U.S. companies are covered by the definition. The Justice Department has used an ad hoc approach which focuses on whether the U.S. subsidiary has an actual operational presence here or is just a shell. Consequently, many lobbyists for foreign-owned U.S. companies do not know whether or not to register. A "bright-line" test is needed—some black and white criteria. The bill requires registration of foreign lobbyists for U.S. companies that are more than 50 percent owned by foreigners.

3. EXEMPTIONS

Section 3 of FARA contains a number of exemptions for activities or persons which might otherwise be covered by the act. Two exemptions may have resulted in underreporting. The first exemption, the "commercial exemption," exempts persons engaged in private, nonpolitical activities with a bona fide commercial purpose. This exemption is intended to cover the normal, nonpolitical professional activities of engineers, architects, realtors, and attorneys with foreign clients. The second exemption, the lawyer's exemption, exempts a lawyer, insofar as he represents a disclosed foreign principal before any court of law or any agency of the U.S. Government. This applies only as long as the lawyer confines his activities to rulemakings, adjudications, agency investigations, and negotiations with agencies regarding government contracts.

The bill requires the filing of an exemption notice with the Attorney General for persons whose activities are exempt under the commercial ex-

emption. Currently, agents self-determine their status under FARA. The bill also removes the lawyer's exemption for agency proceedings. Senator HEINZ, has argued, and I agree, that in "the trade area, much of the work of representation is carried on in the context of formal proceedings, such as antidumping or countervailing duty investigations.* * * To exclude this type of activity from reporting is a loophole of some significance."

4. ENFORCEMENT

The bill includes a schedule of civil fines, which has been suggested by CRS and GAO. It also gives FARA administrators subpoena power to make it easier to investigate compliance. Thirdly, the bill sets up a separate office of DOJ to administer FARA, a provision that was suggested by Senator McGovern in a 1977 bill he introduced on FARA. It has been said that location of the office within the Justice Department Criminal Division's Internal Security Section also adds to the stigma I discussed earlier.

5. ANNUAL REPORT

Finally, the bill requires an annual report to Congress by the Attorney General on the administration of the act.

Title II of the bill adds a new section 207a to the Ethics in Government Act. Congress has the responsibility to safeguard the integrity of the Government's decisionmaking process and strengthen the American public's confidence in it. We have read of officials leaving from the highest ranks of this Government and turning around to advise foreign governments, trade associations, and companies. I believe the 1-year ban on representing foreign governments in current law should be expanded and that the ban should include foreign companies. In my bill, there is a 5-year ban on the President, the Vice President, the Cabinet and other very high level appointees and a 2-year ban on other senior executive branch officials and members of Congress from representing foreigners for pay.

Mr. President, according to Business Week magazine, the Japanese Government and Japanese companies spend $100 million a year for Washington lobbyists, lawyers, and political advisers. The employ over 100 lobbying, public relations and law firms to represent their interests. We can compare this to the $52 million in salaries for all 535 Senators and Congressman.

As Pat Choate reports in the September issue of the Harvard Business Review, between 1973 and 1990, one-third of former USTR officials who held principal trade positions have represented foreign interests in the private sector. These and other examples lead me to conclude that a further cooling-off period is needed in order to protect the integrity of the U.S. Government's policy-making process. The open revolving door in Washington and the cynicism it engenders is not the fault of the Japanese or the British or the Dutch. It is our fault if we allow it to continue to undermine faith in our system of government.

I believe the Foreign Representation Act of 1990 with its dual purpose of increasing disclosure of foreign lobbying and slowing the revolving door is an important initial step in restoring confidence in the U.S Government and I urge my collegues to support it.

I ask unanimous consent that the Harvard Business Review article I mentioned be printed in the RECORD and I thank the Chair.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Harvard Busines Review, September-October 1990]

POLITICAL ADVANTAGE: JAPAN'S CAMPAIGN FOR AMERICA

(By Pat Choate)

Imagine a foreign country running an ongoing political campaign in the United States, as though it were a third major political party.

Imagine it spending more than $100 million each year to hire 1,000 Washington, D.C. lobbyists, super-lawyers, former high-ranking public officials, public relations specialists, political advisers—even former presidents. Imagine it spending another $300 million each year to build a nationwide grass roots political network to influence public opinion. Imagine that its $400 million per year political campaign sought to advance its economic interests, influence U.S. trade policy, and win market share in the United States for its target industries.

None of this is imaginary, none of it is illegal. The country that is actually undertaking this political campaign is Japan. Today Japan controls the most sophisicated and successful political-economic machine in the United States. More extensive and effective than either U.S. political party or any U.S. industry, union, or special interest group, Japan's campaign for the United States is designed to serve one very important purpose: to influence the outcome of political decisions in Washington, D.C. that directly affect Japanese corporate and economic interests, decisions in which every day hundreds of millions of dollars—and cumulatively billions of dollars—are on the line.

By knowing about these decisions ahead of the competition, by using its network of well-connected insiders and lobbyists in Washington, D.C., by activating its broad-based network in local communities across the country, by shaping American journalists' coverage of economic issues, and by promoting its opinion leaders in universities and think tanks, Japanese companies and the Japanese government are able to transform political strategy into a critical element of corporate and national strategy.

This political game is going on every day, as it was for most of the 1980s. Among the victories scored by Japanese interests during the last decade—in supercomputers, machine tools, ball and roller bearings, optical fibers, satellites, biotechnology air transport, telecommunications, semiconductors, legal and financial services—one recent example illustrates the power and importance of Japan's growing political influence in the United States: Trucks and tariffs. It is a victory in which Japanese organizations successfully outmaneuvered General Motors, Ford, Chrysler, and the United Auto Workers and, in the process, deprived the U.S. Treasury of more than $500 million per year in duties.

Since 1981, the Japanese government has set a "voluntary export restraint" on the number of passenger cars it would send to the United States. No such restraint existed for light trucks. There is, however, a substantial difference in the tariff levied by the United States on cars versus light trucks: for passenger cars it is 2.5%, for light trucks, 25%. During the early and mid-1980s, the Japanese paid the difference in duties without raising any issue; but in 1987, the situation changed. The larger number of new Japanese auto plants in the United States, combined with a growing demand for light trucks as a family vehicle, meant that the passenger-car quota was going unfilled. To fill the limit, the Japanese sent more light trucks. To avoid paying the higher tariff, they bgan to reclassify light trucks as passenger cars.

In the spring of 1988, the U.S. Customs Service became aware of Japan's abuse of tariff regulations and initiated a review process, inviting comments from interested parties. The Japan Lobby went to work. Japanese interests responded by expanding their lobbying team. In October 1988, for intance, Suzuki Motor Company hired Robert Thompson, a well-connected Republican lobbyist who had been an aide to Vice President George Bush in the 1980s.

The Japanese campaign began in the summer of 1988 with a letter from Congressman James Inhofe, cosigned by 30 representatives and 11 senators, urging Commissioner of Customs William von Raab to classify light trucks a cars. Inhofe followed up his letter by summoning von Raab to his office to explain why the review process had been initiated. When von Raab got to the congressman's office, he found Inhofe—and John Rehm, who had been general counsel in the White House, Office of the Special Representative for Trade Negotiations during the Johnson administration. Rehm's law firm represented Japanese and other foreign automotive interest, plus American automobile importers. With Inhofe's blessing, Rehem sat in on the entire meeting. Both Inhofe and Rehm urged von Raab not to pursue the reclassification issue, but von Raab refused to preempt the Customs Service's decisionmaking process.

On January 4, 1989, Customs ruled that light trucks could not be classified as cars. In an interview later, von Raab said of the decision, "These vehicles are built on truck bodies. They have truck characteristics. Most are built in truck divisions. They are advertised as trucks, off-road vehicles, vans, or vehicles that can carry cargo. For years, the Japanese have certified them as trucks when importing them into the United States. Even my grandmother can go into a parking lot and tell the difference between a passenger car and a truck. These are trucks."

Japanese interests reacted swiftly. At a meeting of the world's finance ministers, the Japanese minister of finance persuaded his German and British counterparts—each of whom had a small number of vehicles that would be affected—to approach U.S. Secretary of the Treasury Nicholas Brady, von Raab's boss, and ask for an official reconsideration of the decision. Brady agreed,

within nine days of the Customs Service decision, the ruling was suspended.

Japan's next move was to seek to kill the ruling permanently. In Washington, D.C., Japan's American lobbyists and representatives of the Japanese government met with officials from the Office of the U.S. Trade Representative, the White House, and the Treasury. Japanese automakers financed a public relations campaign built on the theme that von Raab's ruling would harm U.S. consumers by increasing prices on light trucks. Auto importers flooded Congress with letters. The government of Japan implied that an unfavorable decision could do great harm to the U.S.-Japan relationship.

In a rare show of political unity, Roger Smith of General Motors, Donald Peterson of Ford, and Lee Iacocca of Chrysler sent a joint letter to the president and Congress urging the Customs's original ruling stand. But in a fierce political contest on the Big Three's home court, the Japanese trounced their U.S. rivals. Within 45 days of von Raab's original ruling, the Treasury Department overturned the Customs Service decision: it was official U.S policy that light trucks were passenger cars for purposes of the tariff.

Then in a remarkable twist, the U.S. government made Japan's victory even more complete: the Japanese convinced the Bush administration to reclassify the vehicles as trucks for sale once they were inside the United States. This bureaucratic two-step allowed the Japanese to enjoy the best of both worlds: first, to reduce the tariff, which is lower for cars than for trucks; and second, to reduce the requirements for fuel efficiency, safety, and emissions, which are lower for trucks than for cars.

In the end, for an estimated $3 million investment in lobbyists, public relations advisers, and political consultants, the Japanese avoided more than 500 million per year in import duties—without making a single concession or agreeing to a single U.S. demand.

JAPAN'S CAMPAIGN FOR AMERICA

Lobbying, seeking political influence, using information to advance economic interest—none of this is unique to Japan or to Washington, D.C. in 1990. Examples abound across the pages of history. Japan's campaign is the most recent and most extensive effort along these lines—and as such raises important questions about how the United States wishes to conduct its democratic practices. Japan's government and leading companies together spend $400 million annually running an ongoing political campaign in the United States. This figure represents an amount equal to the expenditures of both the Republicans and Democrats in both the House and Senate elections of 1988, combined. Japan spends more on its 1,000-person lobby in Washington, D.C. than the five most influential American business organizations—the U.S. Chamber of Commerce, the National Association of Manufacturers, the Business Roundtable, the Committee for Economic Development, and the American Business Council—combined. In fact, Japan spends more in America in lobbying, politicking, and propagandizing than the 12 nations of the European Community combined. The people who it hires as its representatives, lobbyists, and spokespersons come for the highest levels of American public life—the best and the brightest policymakers, political strategists, legal experts, elected and appointed officials.

Like any high quality political campaign, the Japanese program in the United States depends on a tested formula for its success: keep your message simple, use a variety of credible messengers, and let the echo effect drown out your opponents. The Japanese have crafted six basic messages that they seek to deliver (see the insert "Japan's Six Excuses") and five techniques for delivering them. The components of their ongoing campaign are:

Intelligence gathering,
Lobbying and influencing policy,
Politicking at the grass roots level,
Dispersing propaganda, and
Influencing U.S. education and classroom instruction.

This is, of course, completely legal. It all falls within Washington, D.C.'s often self-serving definition of ethics—which one powerful lawyer-lobbyists described as, "If it's legal, it's ok." And it all deeply corrodes the integrity of the economic and political system of the United States.

To the Japanese, a political strategy in the United States—indeed, in every major market of the world—is a critical element of business strategy (see the insert "Japan in Europe"). In fact, what an in-depth analysis of Japan's systematic political strategy in the United States teaches is the dominant role of politics in the global economy. According to an A.T. Kearney survey, fewer than 30% of America's top 150 CEOs even try to influence the policies of their own government. Japanese business leaders, in contrast, have eagerly embraced the notion that politics is a critical source of advantage in global competition. Americans have become accustomed to high-quality, low-cost, innovative Japanese products in the market-place. Now the Japanese are bringing the same high level of performance to a political product offered in the corridors of Congress and the back halls of the White House.

In politics, as in manufactured products, Japanese strategy follows a simple and predictable pattern: protect your own domestic market from foreign penetration, capture as much of your competitor's market share as possible. In Japan, it is unthinkable that a top government official would become a top lobbyist for a U.S. corporation, that a candidate for high office would accept a campaign contribution from a U.S. corporation, that a foreign government would stage-manage a grass roots political campaign among its people, or that foreign companies or governments would establish think tanks to feed ideas into the government. In all these ways, Japan is a closed political market.

Yet, in all these ways, Japan is gaining political market share in the United States, spending hundreds of millions of dollars for competitive advantage. To the Japanese, politics is another legitimate business expense.

It is a business expense that the Japanese incur with remarkable consistency, coherence, and coordination. As with their larger business strategies, when it comes to global politics Japanese business and government interests work together, practicing a unique brand of "economic diplomacy" that puts the instruments of state to use for economic purposes. For example, a representative of the Keidanren, the Japan Federation of Economic Organizations, is stationed in Japan's Washington, D.C. embassy, and the consul general in Japan's nine consulates across the United States functions first and foremost as a chief economic officer. Moreover, the Japanese are prepared to spend whatever it takes on politics to secure their economic goals—recognizing that $400 million per year is a bargain if it safeguards a $50 billion per year bilateral trade surplus.

Japan's political machine in the United States is designed to serve six national and corporate goals:

1. To keep the U.S. market open for exports from Japan.
2. To smooth the way for additional purchases of key assets in the United States.
3. To blunt criticism of Japan's adversarial trade practices.
4. To neutralize or, even better, to capture the political influence of the U.S. companies that compete with Japan.
5. To influence U.S. trade policies toward Japan, Europe, and all other markets where Japan has significant economic interests.
6. To create an integrated U.S.-Japan economy that prevents the United States from confronting Japan economically and politically.

Other nations lobby on behalf of their economic interests in the United States; in fact, South Korea, Taiwan, and several European nations are now setting up their own political machines in the United States. But there are important differences, both in approach and amount. For the most part, Canada and the nations of Western Europe still rely on traditional diplomacy to influence U.S. policies; companies from these countries tend to retain representatives only when they need help to fight a specific decision that would affect their ability to compete.

Japan, by contrast, has sought to establish an integrated political strategy. Moreover, the scale of the Japan Lobby in Washington is unprecedented: the government of Japan and Japanese companies employ 92 law, public relations, and lobbying firms on their behalf, compared with Canada's 55, Britains's 42, and the Netherland's 7—the 3 other largest investors in the United States. Japanese corporations and governmental agencies have relationships with the ten largest law firms in Washington, D.C. that specialize in trade matters.

Among the nations of the world, only the Japanese government offers a tax break to its companies that make corporate contributions to civic affairs—in the United States. In February 1990, the Foreign Ministry summoned 300 of Japan's business leaders to a meeting in Tokyo and instructed them to increase their local donations in the United States. As an added inducement, the government announced that it would give them benefits on their taxes in Japan for such contributions.

The Japanese help finance both the Republican and Democratic parties, make major contributions to political action committees, and count on their payrolls top political advisers to the president, to members of Congress, to governors, and to mayors. Charles Manatt, for example, who headed the Democratic National Committee in the mid-1980s, is now a Washington, D.C. political adviser to NEC America. Frank Fahrenkopf, who chaired the Republican National Committee from 1983 to 1989, while in office arranged meetings with top U.S. government officials for his client, Toyota Motor of North America.

Moreover, the Japanese are willing to be explicit about their political goals in the United States. According to Akio Morita—chairman of Sony, vice chairman of the Keidanren, and chairman of the Keidanren-created Council for Better Corporate Citizenship in the United States—Japan's investments in the United States have a specific

political purpose. "What we mean by 'better investment,'" Morita wrote in *The Japan That Can Say "No,"* "is the type of investment which will get Americans on Japan's side". Getting "Americans on Japan's side" means changing how Americans vote. The goal set by Morita: "make politicians stop bashing Japan."

The Japanese political strategy in the United States replicates the political mindset in Japan in some fundamental respects. In Japan, money politics is an established fact. A golden triangle, consisting of the Liberal Democratic Party (LDP), elite bureaucrats in government ministries, and established corporate leaders from business, dominates Japan's domestic political machinery in a way designed to serve the country's economic interests. Money and the exchange of political favors make the system go: the Keidanren alone provides the LDP with $100 million each year. In 1990, with the LDP's 35-year uninterrupted reign in jeopardy because of money politics and the stain of the Recruit scandal, the Keidanren and other Japanese business interests contributed more than $1 billion to keep the party in power.

It is a world of very tight political, economic, and personal relationships. Take the construction industry, where politics is everything, public spending critical, and bid-rigging, or *dango*, all too commonplace. The youngest daughter of former Prime Minister Noboro Takeshita, who was forced to resign in 1989 in the wake of the Recruit scandal, is married to the son of the president of one of Japan's "Big Six" construction companies. Takeshita's eldest daughter is married to the son of the leader of the construction *zoku*—the LDP policy group covering that particular industry. Takeshita's half-brother is married to the daughter of the founder of Fukuda Construction Company, one of Japan's largest contractors. Former Prime Minister Yasuhiro Nakasone's daughter is married to the heir apparent of Kajima Construction, Japan's largest construction company.

In Japanese politics, moreover, the line between gifts and bribes is hard to discern. In the Recruit scandal, for example, former Prime Minister Nakasone admitted that he had received $300,000 from Recruit; his successor, Noboro Takeshita, admitted that he had received more than $1.5 million. Neither man was arrested or indicted; the money was classified as political contributions.

In Japan, there is a name for this approach to politics: "structural corruption." It is the same approach to politics that the Japanese are now vigorously practicing in the United States—with the active participation and eager complicity of American lobbyists, power brokers, and government officials.

It is, after all, greed and self-interest in Washington, D.C. that makes it all possible, the "revolving door" of government at the highest levels that confuses "public service" with "personal advancement" and mistakes "legal" for "ethical." For many, a top job in the cabinet is merely a sabbatical from a more permanent career as a registered agent lobbying for a foreign corporation. For example, between 1973 and 1990, one-third of the principal trade officials in the Office of the U.S. Trade Representative (USTR) left to become registered foreign agents; most did work for Japan. Fully one-half of those who held the position as the nation's top trade negotiator later became lobbyists for foreign businesses; three of those were subsequently hired to work for Japanese corporations.

This pattern of economic relationship between Japan and top U.S. officials includes other key agencies as well. A 1986 General Accounting Office survey identified 76 former federal officials who left office between 1980 and 1985 and then became registered foreign agents. The list—which the GAO acknowledges is only partial—includes 8 special assistants to the president, 5 assistants to the president, 2 deputy assistants to the president, 1 presidential counselor, a deputy White House press secretary, a chief of staff to the vice president, a chairman and vice chairman of the U.S. International Trade Commission, 2 deputy U.S. trade representatives, 6 senators, 9 representatives, 12 senior Senate staff, 5 senior House staff, and 4 retired generals. Together these 76 former top-ranking U.S. officials represented 166 foreign clients from 52 countries and 2 international organizations—20 of them went to work for Japan.

Japan's political campaign in the United States, and the eager willingness of American insiders to represent Japanese economic interests in this country, have serious implications for U.S. companies and the American public. In one critical industry after an other, U.S. companies, originally challenged by Japanese manufacturing prowess, now run the added risk of losing out to the Japanese competition because of Japan's well-managed political strategy. American companies, pressed in the market for the consumer's favor, may now face the defection of their own government as an ally in global competition. For the American public, the issue is even more stark. With so much Japanese money influencing so many officials in government, the question for the American people is, "Who do you trust?"

JAPAN'S INTELLIGENCE GATHERING

In late 1988, the Washington, D.C. trade policy community speculated over who would be named by newly elected President George Bush to the post of U.S. trade representative. During this period, Carla Hills's name never appeared in the American press. But in Tokyo, the insiders already knew. One week before the appointment was announced, a Japanese official bragged to an American friend that "the lady" who would be named was "most acceptable" to Japan. Two days before the appointment was announced, a Japanese newspaper, the *Nihon Keizai Shimbun*, broke the story in Tokyo.

Today Japan can boast the best political intelligence system in the United States. One of the most important functions of the lobbyists and public relations firms hired by the Japanese is to keep a steady flow of current information streaming back to Tokyo. According to Herbert E. Meyer, vice chairman of the National Intelligence Council during the Reagan administration, "Every branch office of every trading company operates like an information vacuum cleaner, sucking in information." Normally, the Japanese will assign three or more companies to the task of analyzing the same problem or issue. The redundancy allows them to discern the difference between *tatemae*—the official story and *honne*—the real truth. It also guarantees that they will know more than any individual lobbyist and permits them to tailor their response to the political circumstances, utilizing the firm or individual whose background, skills, or personal relationship best fits the needs of the situation.

Japan's intelligence operation extends, as well, to one of the most important and least visible parts of Washington, D.C.'s policy arena—the staff. In the 1980s, as the economic stakes of political decisions escalated, the Japanese grew to appreciate the influence of congressional and administration staff. Aides do research, draft legislation, negotiate with constituents, contributors, and special interests, and cut deals with their counterparts in Congress and the executive branch. To come to terms with congressional staff, the Japanese commissioned a major study of the role and career patterns of the 30,000 people who fill these critical slots. As a piece of political intelligence, the study is a remarkable chronicle of Japanese political strategy.

Commissioned in 1982 and published in 1984, the study, "Role of the Congressional Staff in the U.S. Decision Making Process" was prepared by Japan's National Institute for Research Advancement. An example of Japanese thoroughness and detail, it not only analyzes the operation of staff but also spells out individuals' educational backgrounds, age distribution, and levels of influence. It flags the "key watching points" that require particular attention from the Japanese and the importance of identifying "floating ideas" that are most likely to capture staff support. Most important, the study emphasizes the need for Japan to win over those staff members who presently are powerful and most likely will become even more powerful. In particular, the study targets young lawyers on the Senate Finance Committee as likely prospects to move into influential trade posts.

To implement the study's findings, the Japanese began to court congressional staff systematically. The Japanese embassy assigned four officials to get close to key congressional staff members—to learn about their backgrounds, personal ambitions, connections, and positions on important issues. The Japanese also made a point of wining and dining these staff members, each year inviting staff-level trade specialists to parties, lunches, dinners, and, increasingly, to all-expenses-paid fact-finding trips to Tokyo. While these trips and other contacts undoubtedly serve useful purposes for staff, they serve other purposes as well. After congressional staff members leave service in the U.S. government, they are increasingly going to work for Japanese clients and Japanese companies.

Because Japanese businesses hire so many senior insiders and coordinate their collection of information so effectively, the Japanese actually have a better overview of what is happening in the federal government than all but a handful of those who serve in the administration. And by having more and better information on the inside workings of the government, the Japanese are able to affect a decision before most people even know that there is a decision to be made.

In 1988, for example, during the final negotiations of the Omnibus Trade Act, a member of the House Ways and Means Committee received a call from an official in the Japanese embassy, lobbying him over a provision of the just-passed Senate version of the measure, which the committee would take up the next day. None of the members of the committee had yet obtained a copy of the Senate draft—as a courtesy and to facilitate its lobbying, the Japanese embassy had a copy hand delivered to the congressman.

LOBBYING AND INFLUENCING POLICY

To put the intelligence they gather to good use, Japanese companies excel at the next phase of politics, gaining access to the

policymakers. In Washington, D.C., access and influence go hand in hand; they are the stock-in-trade of the lobbyist, the lawyer, and the political adviser. They are, as well, the one "skill" that current office holders and staff members can take with them when they leave the government (see the insert "How to Make an American Governor a Japanese Lobbyist").

Consider a recent case involving the 1990 U.S.-Japan Super 301 talks on bilateral trade in high technology. During the negotiations, Fujitsu Ltd., one of Japan's largest electronics companies, hired David Olive, one of the State Department's principal experts on the substance of the talks, to be a senior representative in its Washington, D.C. office. Olive had helped draft State Department position papers, attended interagency meetings, had access to confidential information shared by U.S. companies, and knew the U.S. negotiating strategy for such critical high technology industries as semiconductors, telecommunications, and supercomputers. The U.S. State Department defended Olive's job change as ". . . in accord with applicable U.S. laws and regulations." Nevertheless, whether intended or not, the Japanese gained two important advantages over their U.S. rivals by this one hire: they secured the services of an individual with a finely honed sense of political possibilities, and they sowed distrust among American companies about whether to share information with their own government.

The easiest way for Japanese and other foreign interests to gain access and establish influence is simply to pay for it. Generally, an insider is hired as a lobbyist. If the former official wants to avoid the embarrassment of having to register as a "foreign agent," the arrangement can be changed to that of "consultant" or "member of an advisory board" of an agency or company. As the economic stakes have grown, the Japanese have added yet another lure to attract U.S. government officials—an equity position in a business deal, with the prospect of substantial and ongoing returns. The transaction is a simple equation: equity for influence.

The sums of money from Japan are so large and the absence of ideals in Washington, D.C. so complete that a substantial number of U.S. public officials are dramatically altering their career paths in the federal government—as well as their decisions while in office. One former U.S. trade negotiator puts it bluntly: "When people in government get ready to leave, they know where the money is. It's with the Japanese. Nobody who's looking at an opportunity to make $200,000 or more a year representing a Japanese company is going to go out of the way to hurt them while in office."

The influence of Japanese money is so pervasive that there is even a name for it: the demonstration effect. The huge sums of money made available to Japan's friends once they leave office "demonstrate" the value of a friendly Japan policy to officials still in office. Some Americans even try to prequalify for a position as a lobbyist for Japan by offering "golden nuggets" of inside information to Japanese corporate or government officials as evidence of their future value.

When it comes to the demonstration effect, nothing rivals the example set by Japan's most recent political coup: the hiring of former President Ronald Reagan as a Japanese public relations shill. In October 1989, former President Reagan hired himself out to Fujisankei Communications Group, a $5.5 billion conglomerate then headed by its founder, Nobutaka Shikanai, a right-wing, controversial tycoon who owned Japan's largest radio network, a national newspaper, and the country's most successful television chain.

For $2 million, America's former chief of state went to work for Fujisankei for one week. He made two 20-minute speeches, gave exclusive interviews to Fujisankei's newspaper and television stations, and, in the process, parroted the Japanese line about U.S.-Japan trade frictions. The bilateral trade friction, Reagan told the Japanese, was America's fault, caused by "trade protectionists" in Washington—whom he "had to fight every day."

That was the message of Reagan's trip to the Japanese; the message to public officials back in Washington was different. To them Reagan's $2 million trip was the pinnacle of the demonstration effect—proof that anyone can be bought by the Japanese if the price is right and permission for others to do the same. After all, if a former president can go to work for the Japanese, why not a lower level bureaucrat? That, despite the fact that it would be inconceivable for Yasuhiro Nakasone, Margaret Thatcher, Helmut Kohl, or François Mitterand, after retiring from public office, to accept money from a U.S. company to do a public endorsement or to advance its national standing.

Funneling money to politicians after they leave office works at one end of the political value-added chain. An even more important activity is to funnel money to them at the front end, to help them get elected in the first place. While U.S. election law prohibits a foreign national from making a direct or indirect contribution in any local, state, or federal election, foreign-owned companies in the United States are allowed to operate political action committees [PACs] and to make political contributions as if they were U.S. corporations. In the 1980s, more than 100 foreign companies—primarily from Europe and Canada—used this legal loophole to play a direct and influential role in American politics. The Japanese use a more subtle technique; they encourage Americans with whom they have important business links to make political contributions to pursue their shared political interests.

The most visible, successful, and controversial example is the Auto Dealers and Drivers for Free Trade PAC—AUTOPAC. As an industry, automobiles today account for $28 billion of the $49 billion bilateral U.S.-Japan trade deficit; therefore, it is an economic issue worthy of strong political involvement by the Japanese and other auto-exporting nations. Just how strong was vividly demonstrated in the 1988 elections. Using a fund-raising formula of $2 per every car sold or $5,000 per year, the foreign auto dealers of AUTOPAC raised $4.5 million, making AUTOPAC one of the top PACs in the United States. Of that $4.5 million, AUTOPAC dumped $1.4 million into just seven congressional races, elections where AUTOPAC picked a candidate who favored an open American market—the single issue of critical importance to the industry.

One such race was the Senate contest in Florida between Democrat Buddy McKay and Republican Connie Mack. In a statewide election decided by only 31,000 votes, McKay lost—in large part because of $326,000 spent by AUTOPAC on negative television commercials in last the days of the campaign. Looking back on the election, McKay says, "In the final analysis, I was not beaten by Connie Mack. I was beaten by Tokyo."

Political action committees like AUTOPAC are only one device for influencing U.S. politics. Another favorite Japanese technique is the use of an existing organization or the creation of an ad hoc coalition—an association of U.S. members that allows Japanese interests to put an American face on their politicking. One example of this approach is a Washington, D.C.-based public interest group, Consumers for World Trade (CWT). Since the early 1980s, CWT has been one of Washington, D.C.'s most avid advocate of unrestricted free trade; its arguments focus on the benefits free trade affords the American consumer. The organization has steadfastly opposed any reciprocal trade law that would threaten Japan with restrictions on access to the U.S. market as a way to pry open the Japanese market. In 1987, CWT organized a grass roots campaign against what it labeled the "protectionist" features of the pending Omnibus Trade Act of 1988; CWT testified in front of congressional committees six times, each time arguing the case for U.S. consumers and against tough trade sanctions aimed at the closed foreign markets, most notably the Japanese.

Starting in 1980, the Japanese began to take a deep interest in CWT. Again, the Japanese automakers led the way. Subaru, for example, paid the initial dues for 1,500 of its employees to become members; in November of 1980, Subaru employees represented more than half of CWT's 2,700 members. Toyota and other Japanese companies made direct corporate contributions. By staying in the background, they did not jeopardize the American face of CWT. Nevertheless, when the Japanese infiltration of CWT came to light, U.S. Senator John Heinz termed it "an underhanded and dishonorable way for the Japanese to try to influence public opinion."

But the most effective lobbying technique reflects the current tangle of global politics and economics. It is the high art of creating a captive competitor. The story of John Young, CEO of Hewlett-Packard and one of America's most respected senior manager, makes the point. In 1983, the Reagan administration created the President's Commission on Industrial Competitiveness and named John Young to be its head. Given the Reagan administration's unyielding laissez-faire ideological bent, most Washington, D.C. insiders considered the commission to be little more than a political fig leaf—a protective cover for the 1984 election in case Walter Mondale were somehow able to make the issue of competitiveness come alive. Predictably, after the election, the Reagan administration tried to vanish the commission and its report, releasing it in an obscure Commerce Department office rather than the White House and printing the absolute minimum number of copies.

But John Young was not so easily dismissed. While insiders might have written off the commission, Young took the issue seriously. He saw to it that the commission issued a first-class piece of work; its findings and recommendations have subsequently framed much of the ongoing debate on the issue. And when the report died within the administration, Young championed the issue on his own. In 1987, he supported sympathetic members of Congress who set up the Congressional Competitive Caucus; working with other corporate leaders, he spearheaded the creation of the Council on Competitiveness, which he currently heads.

But in 1987, another event occurred: the Toshiba Machine Company, which is 50% owned by the Toshiba Corporation, was

found to have sold sensitive technology to the Soviet Union—technology that would allow Soviet submarines to escape detection by the United States Navy. Congressional reaction was swift and fierce: in June 1987, the Senate voted 92 to 5 to impose sanctions on Toshiba; the House was prepared to vote to ban the sale of all Toshiba components in the United States for two years.

And suddenly John Young, champion of U.S. competitiveness, found himself forced to use his Washington lobbyists on behalf of Toshiba—because Hewlett-Packard, like so many American high-tech companies, simply could not do business without Toshiba's components. In a textbook example of "leverage lobbying," Toshiba, the Japanese supplier, used the leverage of its strategic components to get its U.S. customers, including Hewlett-Packard, to lobby Congress on its behalf. The U.S. companies had become Toshiba's captive competitors.

GRASS ROOTS POLITICKING

It is a guiding principle of American political life that all politics is local. It is a principle that the Japanese have been quick to grasp, building an extensive coast-to-coast network of politics at the grass roots level across America. And it is a principle best put into practice by the Electronic Industries Association of Japan (EIAJ) and Sony's Akio Morita.

In June 1985 presentation to the members of EIAJ, which is made up of Japan's 600 largest electronics companies, Morita explained that U.S. criticism of Japan "is not due to a misunderstanding of and prejudice against Japan, but rather to certain political intentions." In response, Morita said, Japan needed to mount a grass roots political campaign in the United States, a campaign that "should not stop with PR within the electronics industry but . . . should expand PR activities to the mass media, consumer groups, and political groups on the state level."

Going further, Morita next laid out an extensive list of political activities for DIAJ's grass roots campaign. The program would consist of:

Managing debates and seminars at the state and local level;

Staging local events with Japanese plants and factories;

Publishing local newsletters and magazines;

Creating exchange programs with state universities and think tanks;

Establishing links with state economic development offices, local chambers of commerce, and the local offices of federal elected officials;

Organizing exchanges with consumer groups at the local level; and

Operating student exchanges.

To weld the campaign into a coherent whole, Morita proposed a unified message that would be repeated in every locality: Japanese investment creates jobs; Japanese companies rebuild depressed U.S. communities; Japanese companies satisfy U.S. consumers; the Japanese and U.S. economies are intertwined.

Before launching the campaign on a national basis, EIAJ decided on a pilot project. It hired the Washington, D.C.-based political consulting firm of Matt Reese & Associates to help test the program in a single state: Tennessee, Tennessee was an attractive test site for several reasons. By 1987, Japanese companies had established 47 facilities, employing 10,000 Tennesseeans, a full 10 percent of Japan's total U.S. manufacturing investment. And in the early 1980s, Japan had already begin public relations and educational efforts in Tennessee, leading to university-based Japan centers, special programs in the school districts of the state's four major cities, and the formation of a Japan-Tennessee Society.

Once the Japanese had targeted Tennessee, the campaign swung into motion. A new local organization was created, the Tennessee-Japan Friends in Commerce (TJFC). The organizers recruited three non-Japanese cosponsors: the state government; the Japan Center of Tennessee, located at Middle Tennessee State University in Murfreesboro; and the Japan-Tennessee Society. For the most part, however, all the cosponsors put up was their names; two-thirds of the budget for the organization came from the EIAJ and its member companies, particularly Toshiba, Sharp, and Matsushita.

To add legitimacy and an American fact to the organization, former Lt. Governor Frank Gorrell was hired to take the position of chairman. To create membership, Matt Reese & Associates identified several thousand Tennessee opinion leaders, who were then invited to join.

As an initial test, TJFC sponsored three forums in Nashville, Knoxville, and Memphis. In attendance were Tennessee Governor Ned McWherter, other state elected officials, business executives, and academic leaders. The message: the importance to the Tennessee economy of the "friendship" between the people of Tennessee and Japanese companies. The keynote speaker: Akio Morita.

In his speech, Morita lamented the fact that politics was responsible for disturbing the otherwise superbly functioning economic relationship between Japan and the United States. He told the crowd, "At a time when the relationship between our two nations has become inextricably intertwined, it is most unfortunate that things that bear on the relationship . . . have become so politicized."

Things were about to become even more politicized—and the pilot project was about to be put to a test. The Toshiba controversy broke out in the middle of the series of public forums, creating a real political emergency. Tennessee responded. Toshiba supporters across the state and state-level elected officials led by Governor McWherter pressured the Tennessee congressional delegation not to impose sanctions on the Japanese company—which happened to be a major Tennessee employer and contributor to TJFC. Remembering the episode, one Tennessee congressman said, "My arm was twisted so hard that I feel lucky to have it."

In the end, the EIAJ deemed the experiment a success. The forums served to establish useful contacts for EIAJ with state opinion leaders; EIAJ's message of the benefits of Japanese investment had been conveyed in a credible fashion; and the forums had given Toshiba an opportunity to communicate its importance to the people and economy of Tennessee. In the wake of the Tennessee test, the Japanese made the determination to take the campaign national.

In 1988, the Keidanren, with Morita again in the lead, formed the Council for Better Investment in the United States—later renamed the Council for Better Corporate Citizenship in the United States, an organization with the avowed purpose of helping Japanese companies become fully integrated "into American society." The nationwide effort aims to win public favor and goodwill through a massive program of charitable donations and highly visible public relations activities. What makes the donations troubling, however, is the fact that Japanese companies have no tradition of charitable giving, either at home or abroad. They generally combine charity and political contributions into one accounting line on the balance sheet. Now the Japanese government is pressuring them to make large, public contributions to defuse the mounting hostility in the United States toward Japan's economic strategy.

At the same time, Japanese companies have carefully spread their investments in new plants and facilities for maximum political advantage with the U.S. Congress. To muzzle congressional critics, the Japanese sited plants in targeted districts; seven facilities have gone into the district of Georgia Congressman Ed Jenkins, a persistent critic of Japan's closed markets. Japanese plants have also been placed in the same district as U.S. competitors in an effort to "share" the elected official and neutralize the rival's political influence. By 1990, the Japanese had successfully established a formidable, fully functioning grass roots political infrastructure throughout the United States.

JAPAN'S PROPAGANDA

The mission of Japanese propaganda is simple: to persuade Americans to adopt favorable views toward Japan. Through propaganda, the endless repetition of their six messages, the Japanese have successfully stifled criticism of their own nationalistic approach to economics and shaped the prevailing U.S. view of Japan and global economics.

Japanese propaganda is effective primarily because it is delivered by highly credible spokespersons—most of them Americans. Some are long-standing experts on Japan, dubbed the Chrysanthemum Club by their critics; others are academics, members of think tanks, and journalists, often with a free-trade ideological bent. While most of them hold their views honestly, almost all are stroked, supported, and promoted by the Japanese, who recognize the enormous value of having earnest American defenders who will make Japan's case.

The Chrysanthemum Club, named after the floral symbol of Japan's imperial family, draws its membership from Americans with an intellectual, personal, or business stake in Japan. Most prestigious and influential are the long-standing members of the U.S. foreign policy establishment, the diplomats who, in many cases, helped forge the post-World War II U.S.-Japan relationship. Now these same individuals are hard at work trying to defend Japan to Americans and to preserve "the relationship"—and the work of their careers (see the insert "The Relationship").

Also in the foreign policy category of Chrysanthemum Club members are entrenched Defense Department officials, unreconstructed cold warriors who give little weight to geoeconomics and continue to place enormous emphasis on the importance of maintaining American military bases in Japan. To them, national security is defined only in military terms; economic friction should not be permitted to jeopardize the geopolitics of the U.S.-Japan relationship. Other members of the Club are free-trade ideologues and U.S. corporate leaders who do not want to see criticism of Japan change the existing rules of commerce between the two nations.

It is this defense of the economic status quo that marks the members of the Club.

Kevin Kearns, a former U.S. diplomat who served in Tokyo during the late 1980s, wrote in the *Foreign Service Journal*, the professional journal for foreign service officers, that Chrysanthemum Club members "somehow fail to see the trail from predatory Japanese policies to lost markets, to destroyed industries, to large outflows of wealth in the form of trade deficits, and finally to the resultant decline of American power and influence. . . . Chrysanthemum members seem to see their function not as representing U.S. interests but as balancing the demands of both sides. . . . to make the increasing Japanese domination of the U.S. economy as painless a process as possible for our institutions and the American people".

A second major instrument for Japanese propaganda dissemination is U.S. universities and think tanks, a majority of which depend on significant Japanese funding and Japanese access to operate their Japanese studies programs. In turn, the Japanese recognize that these institutions craft many of the ideas and conduct many of the studies that shape American opinion on trade and economic policy. Almost without exception, Japanese contributions support the work of those who advocate neoclassical laissez-faire trade policies. These views are genuinely held; the Americans who argue for this approach would make the same arguments with or without Japanese financial assistance. What the Japanese hope to accomplish through their support of these people's work is to amplify it, sustain it, and give it added influence in the highly competitive marketplace of ideas. Moreover, since ties to and support from Japan are often obscured or left unreported, the question of objectivity goes unasked.

American academics typically line up on every side of every issue. But in the case of the U.S.-Japan relationship, more than simple intellectual disagreement has come into play. The Japanese exercise extraordinarily tight control over access to information within Japan. In more than once case, U.S. scholars, academics, and students who have been critical of Japan have found their research efforts jeopardized or made more difficult. Conversely, friends of Japan can find that most obstacles are swiftly removed. Another consideration is money. It takes a great deal of money to run a major Japan studies program—and the Japanese are much more inclined to contribute substantial sums to those whose academic research supports their interests and substantiates their propaganda.

American academics have also emerged as the leading critics of the "revisionists"—particularly Karel van Wolferen, Clyde Prestowitz, Chalmers Johnson, and James Fallows—who advocate changes in the U.S.-Japan relationship. For example, George R. Packard, who is the dean of the School of Advanced International Studies (SAIS) of Johns Hopkins University, has publicly labeled van Wolferen "a hoax" and attacked the writing of Prestowitz and Fallows as threats to the U.S.-Japan relationship. Packard's program at SAIS is one of the leading academic centers for U.S.-Japan studies; it has been a regular recipient of Japanese funding.

Undoubtedly, Packard comes to his views honestly. And the Japanese come to them eagerly, ready to broadcast them to gain political advantage. For example, the February 1989 issue of *The Atlantic* carried a 16-page special advertising supplement paid for by major Japanese companies. Called "Partners in Prosperity," the supplement contained advertorial messages from Mitsubishi, Brother, Canon, Ricoh, and other Japanese companies, featuring titles such as "Toyota USA: An American Phenomenon." But the major element was an essay by George Packard, which argued that the United States and Japanese economies and cultures have been transformed "into one nearly seamless web of interdependence."

In the area of trade, Packard concluded, any differences between the two nations are "more than compensated for by the clear and well-recognized benefits that each nation draws from the partnership." On the Japanese side, Packard chalked up access to the wealthiest market in the world, to which Japan sends 40% of its exports; access to U.S. scientific and technological advances "through various arrangements"; ability to rely on the United States for defense—which means a lower level of military and defense expenditures and benefits such as an uninterrupted oil supply from the Middle East.

On the U.S. side, Packard listed: access to military bases in Japan; $7 billion in annual agricultural exports to Japan; access to Japanese management techniques and technological innovations; and U.S. consumers' access to Japanese products. Pared to its essentials, the list represents the U.S.-Japan trade relationship: Japan gets to send its products to the U.S. market; Americans get to buy them.

Nowhere does Packard mention Japan's $50 billion annual balance of trade surplus. Rather, his addition to the benefits enjoyed by each side leads him to conclude: "Thus the partnership has been firmly rooted in mutual interests"—the kind of conclusion that the Japanese argue repeatedly and are only too happy to have Americans make for them.

The third channel for carrying Japanese propaganda is the U.S. media, which Japan affects in two ways: financing programs that are presented over the airwaves and influencing the content of journalists' reporting on Japan. Since the early 1980s, Telejapan and the Japan Center for Information and Cultural Affairs (JCICA) have sponsored television and radio programs in the United States, producing shows for the Christian Broadcasting Network, the USA Cable Network, the Cable News Network, and public television stations. Both Telejapan and JCICA are directly linked to the Japanese government. Telejapan is affiliated with the Ministry of International Trade and Industry. JCICA works with the Foreign Ministry, which has had to approve the release of funds for at least one of the JCICA's television projects.

In 1986, MITI went even further in its attempt to influcence the American public's view of Japan: it established the Moonlighter Project, a $200,000 fund to pay moonlighting U.S. reporters directly. As reported in the *Mainichi Shimbun*, MITI's initial plan was to put on the Japanese payroll one reporter, editor, or local chamber of commerce director in each of 10 states. Missouri and Michigan, home to three of Japan's leading critics—Congressmen Richard Gephardt and John Dingell and Senator Donald Riegle—were among the test sites chosen. If the test worked, MITI would extend the program to include more journalists and states. The purpose of the project, as defined by MITI, was to have journalists collect information that would help Japanese companies expand in the United States and to "conduct PR on Japan's market-opening measures."

The program collapsed when Congress learned of it. Senators John Heinz, Donald Riegle, and Frank Markowski wrote angry letters to the U.S. secretary of state, the U.S. attorney general, Japan's prime minister, and the Japanese ambassador in Washington, D.C. Riegle denounced the program as "particularly insidious because it is designed to contract with influential Americans so the Japanese can make use of their personal contacts, reputations, and positions in local communities. . . . MITI's plan shows that the Japanese government, despite its promises to correct sources of trade tension between the two countries, continues its strategy of temporizing and distracting American public opinion while actively worsening the already dangerous bilateral trade imbalance."

JAPAN EDUCATES THE UNITED STATES

Japan's most forward-reaching political program is aimed at U.S. educators and students. Its goal is to shape what future generations of Americans think and know about Japan-including rewriting the history of World War II to omit Japan's atrocities against occupied nations and prisoners of war and to explain the war in the Pacific as a consequence of the U.S. decision to cut off Japan's supply of steel and oil.

The Japanese government began its effort to influence America's educational system in 1978, when it commissioned West Coast-based consultant Charles von Loewenfeldt to develop a strategy to shape what elementary and high school students in the United States are taught about Japan. Von Loewenfeldt's advice: the best way for Japan to reach the students was first to teach the teachers.

Soon the government of Japan launched its education program by offering elementary and secondary school social-studies teachers all-expenses-paid tour of Japan—"invitational diplomacy" designed to give the teachers a carefully prepared, stage-managed impression of Japan. These tours are almost always the same: they begin with a visit to historic, charming Kyoto; next they go to Shikoku, one of the main islands, where teachers stay with selected families for several nights; then they go to Hiroshima Peace Park, which retells the history of World War II and America's dropping of the atomic bomb from the Japanese perspective; then to Osaka to see modern Japanese industry; and finally, to Tokyo to see the famous Japanese juku, or cram schools.

When the teachers return to the United States, they are expected to write trip reports and are encouraged to give talks in their local communities to "explain" Japan back home. An aide to von Loewenfeldt describes the real purpose of the program: "One teacher who has visited Japan can infect hundreds, even thousands, of other teachers with his or her enthusiasm."

To help spread the "infection" even further, the Japanese have financed the production and distribution of teaching materials: handbooks, lesson plans, videotapes, and other instructional supplies. Of course, these teaching materials present history and economics from Japan's point of view. For example, according to one workbook, Japan invaded China because of American and European racist insults directed toward Japan after World War I. Another text explains in great detail the U.S. role in causing the war in the Pacific, including U.S. actions that drew Japan to attack Pearl Harbor.

In economics as well, Japanese-sponsored material carries familiar Japanese propa-

ganda as if it were established academic fact. Teaching guides either dismiss the U.S.-Japan bilateral trade imbalance as a matter of little consequence or, alternatively, blame it on U.S. business, workers, and government. One text teaches, "According to economic theory, we do not need to worry about trade imbalances because market forces cause them to disappear." The guides explain away Japan's protected markets as necessary: since "Japan is a small island country with no natural resources," it must have a trade policy that will guarantee supplies of food and energy and cash reserves with which to buy necessities on the world market (see the insert "Japan is Different"). Why the United States and other nations have no similar need is not mentioned or discussed.

In the 1980s, the Japanese extended their education effort through a $2 million per year "Program for Teaching About Japan." The program concentrated on social studies—economics, history, trade, and U.S.-Japan relations—and was designed to make it easy for teachers to offer prepackaged lessons on Japan; videotapes, sample lessons, student handouts were all provided. As one high-ranking official in the Japanese Foreign Ministry said in an interview, "I'm not worried about U.S.-Japan relations in a decade. By then, the next generation of Americans will think differently about Japan".

AMERICA'S POLITICS, AMERICA'S FUTURE

Japan's campaign for the United States is completely legal. It plays the American economic game by American rules. It uses the campaign tactics and methods of American politics. It hires Americans to lobby, educate, and influence other Americans. It is the highest stakes political-economic game in the world today, affecting whole industries, billions of dollars, million of jobs, and, ultimately, the wealth and power of nations.

It is also deeply corrosive of the U.S. political and economic system. The revolving door of Washington, D.C. breeds cynicism and mistrust. It ultimately represents a form of political corruption—completely legal, completely unethical. The problem, of course, is not in Tokyo, but in Washington D.C.

Americans have all but lost sight of some of the most basic lessons of civics—chief among them the guiding concept of civic virtue. The value of national service—for an individual to be of service to the country and to work on behalf of the country's interests—has been cheapened by a more mundance coin of the realm: personal advancement, self-interest, big money. As a consequence, the United States is not only selling corporate assets and real estate to foreign bidders; also for sale is U.S. integrity and national honor.

The revolving door must stop. Those who hold top federal positions, such as director of the Central Intelligence Agency, U.S. trade representative, and secretary of state, should be permanently prohibited from becoming foreign agents or paid lobbyists for any corporation—foreign or domestic. For lower level federal office holders, there should be a longer "cooling off" period between their departure from government service and their availability to lobby, counsel, or advise on trade matters. As of January 1991, federal law will require a one-year waiting period; five to ten years would represent a more substantial safeguard of the public interest.

In a democracy, the best disinfectant for corruption is sunshine. All foreign agents—those who represent foreign clients, whether lobbyists, journalists, academics, public relations advisers, political strategists, lawyers, or foundations—should provide full disclosure to the Justice Department. No exceptions. Foreign companies should be flatly prohibited from participating in and contributing to U.S. elections. Money politics is bad enough; foreign money politics is out of the question.

Moreover, where it is legal and ethical for companies to hire former elected officials, U.S. corporations should recognize the new reality of global competition: politics is source of competitive advantage. U.S. companies must accept and participate in both the reforms of the corrupt practices that now go on—recognizing the domestic corruption is every bit as destructive as foreign corruption is—and the legitimate pursuit of political advantages.

Japan's campaign for America should serve as a powerful wake-up call to U.S. business leaders that politics is a critical component of corporate strategy. In Washington, DC in state and local governments, in school districts across the country, politics not only shapes public opinion and perception but also drives outcomes in terms of real products and services in the marketplace. Significantly, this holds true in Tokyo as much as in Washington, D.C. and yet in the home market of American companies, the Japanese have proven more effective than their American rivals in seizing the political advangage.

Moreover, most U.S. companies, if they do business in Japan, regard the Japanese government as an alien and external entity and depend almost solely on the American embassy for political advice and counsel. Whether in Tokyo or Washington, the lesson is the same; companies can create political advantage that goes beyond the conventional boundaries of company strategy. Indeed, the political and economic dimensions are inseparable.

Finally, it is up to American business leaders and the American people to demand a higher standards of conduct from their elected and appointed representatives. Companies that are accustomed to the requirements and strictures of the Corrupt Foreign Practices Act should now demand at U.S. Version—a Corrupt Domestic Practices Act. The manipulation of the U.S. political and economic systems for foreign interests with the will and eager participation of Americans-for-hire threatens America's national sovereignty. It threatens America's future. It goes on only because Americans tolerate it. Americans are the only ones who can stop it.

JAPAN'S SIX EXCUSES

Through propaganda, Japan has been able to ward off American criticism of its protectionist economic policies. Using six simple excuses and then repeating them endlessly in countless variations, Japan has crafted an effective public relations campaign. Japan's six excuses are:

EXCUSE 1: JAPAN CREATES JOBS FOR AMERICANS

In the late 1980s, when Japan began to be criticized for its rapidly expanding investment in the United States, the propaganda theme most widely disseminated by its spokespersons was that Japanese investment created new jobs for Americans. The theme worked to defuse the criticism—but it is betrayed by the facts. Of the 677,000 jobs that all foreign investors, including Japan, claim to have created in 1988, only 34,000—a mere 5%—were created by the establishment of new foreign-owned operations in the United States. The other 95% were made up of existing jobs in U.S. companies that were taken over by foreign investors. Moreover, when we take into consideration the liquidation or cutback-related layoffs in foreign companies' newly acquired U.S. affiliates, the net number of new jobs created by all foreign investment is nominal at best and may actually be negative.

EXCUSE 2: JAPAN'S CRITICS ARE RACISTS

"Criticism of Japan is racism" has long been a mainstay of Japanese propaganda. With no apparent hestitation, Japanese propagandists automatically label critics as racists. Variations include calling critics "Japan bashers," "Jap bashers," or even "Japanophobes." Of course, some Americans are racist and some bashing of Japan does occur. But the vast majority of accusations of racism and Japan bashing is little more than a cynical gambit by the Japanese and those in their pay to silence Japan's critics and discredit legitimate American debate.

EXCUSE 3: IT'S AMERICA'S FAULT

The "It's America's fault" excuse promotes the perception that U.S. trade problems are entirely homegrown—poor quality, lazy workers, a high budget deficit, among dozens of other variations. If this were true, America would be hard put to blame the Japanese for any bilateral trade frictions. To be sure, the United States has many shortcomings. Still, these inadequacies do not explain why U.S. products that are fully competitive are kept out of Japan's market. Hundreds of U.S. companies produce goods and services that are the best in the world by any measure—price, quality, service, innovation, and marketing. These companies hire salespeople who speak Japanese. They make a long-term commitment to their Japanese customers. Yet most make only a token penetration into the Japanese market. By contrast, these products compete with great success against Japanese goods in Europe and other markets. This defies all economic logic—unless we consider one critical factor: Japan's markets are far more closed than are America's or Europe's. And that's Japan's fault.

EXCUSE 4: GLOBALIZATION

The message of globalization is that national borders are disappearing, along with such outdated concepts as national pride and national security. In their place is emerging a single world economy, where dependence and national allegiance have no place and corporations are no longer Japanese, American, or European but entities separate from nations. The underlying message: policy sophisticates shouldn't worry about the Japanese purchases of U.S. assets or about Japan's quest for global domination of key industries. What is ignored, of course, is that by selling its appreciating capital stock (real estate and companies) to buy depreciable foreign-made consumer goods (VCRs, cars, and electronic gadgets), the United States is sure to be a poorer nation in the long run. For after the consumables are gone, Japanese and other foreign investors will still be taking profits and rents from their ownership of equity.

For all of Japan's arguments that national borders are evaporating, its own borders remain substantially closed. As a consequence, American and other foreign investors own fewer than 1% of Japan's national assets—a stark contrast to the United States (9%) and West Germany (17%). Equally im-

portant, in the 1980s, the ratio of manufactured imports to GNP was less than 3% in Japan, compared with roughly 7% in the United States and more than 10% for most European countries.

EXCUSE 5: JAPAN IS UNIQUE

Japan has long sought unequal and nonreciprocal relationships with the United States by arguing that it is "unique" and thus requires special treatment. The United States, for instance, is urged to accept Japan's closed rice market and discriminatory distribution system because they are part of Japan's unique culture, even as Japanese companies have full access to the rich U.S. market. Ironically, the heart of the revisionists' argument is that Japan is indeed different from other nations and should be treated differently. When the revisionists argue that Japan is unique, however, the Japanese reject the argument.

EXCUSE 6: JAPAN IS CHANGING

Japan forestalls tough American action to open its closed markets by holding out the prospect that "change is imminent." In the 1960s, Japan was supposed to change once its youth came into positions of influence. In the 1970s, Japan was supposed to change once enough Japanese tourists and businessmen had been exposed to other nations. In the early 1980s, Japan was supposed to change because of the "internationalization" of Japan's financial market. In the late 1980s, Japan was supposed to change because political reforms created by the Recruit scandal would produce a Japanese government far less beholden to its corporations and more concerned about consumers.

For all of the American and European anticipation of change, Japan remains by far the most closed industrial market in the world. Thus it is reasonable to ask: Do Japan's policymakers really want to change?

JAPAN IN EUROPE

In the fall of 1988, Cores, a Japanes consulting firm that specializes in foreign marketing, presented 20 of Japan's largest electronics manufacturers with a detailed blueprint for lobbying, politicking, and progagandizing in Europe. The goal: influence the rules that the European Community is adopting to create a single market in 1992.

Japanese companies were advised to: join every local industry association they could; hire lobbyists and public relations personnel in each of the EC's 12 nations; establish an intelligence-gathering network in each country; spread their facilities across the EC; hire European lawyers and financial experts who could monitor local developments; invite influential European academics, journalists, and politicians to Japan; and appoint a local political personality as a figurehead chairman for Japan's European operations—someone who would be willing to open doors and lay the groundwork for the systematic lobbying of national officials and politicians. In short, every element of the political strategy that was first employed by the Japanese in the United States is now being deployed in Europe.

"THE RELATIONSHIP"

Japan's diplomatic trump card is America's obsessive concern with the U.S.-Japan "relationship." Repeatedly, the Japanese have elevated contentious bilateral issues into tests of the soundness of "the relationship." When American rice millers sought help from the U.S. Government to open Japan's closed market, both governments warned that American pressures threatened "the relationship." Critics of the FSX agreement were accused of threatening "the relationship." Efforts to open Japan's closed construction market were sidetracked because they might harm "the relationship."

Repeatedly, the United States has made political and economic concessions to preserve "the relationship." It is a uniquely Japanese form of brinkmanship. And, invariably, when America goes "eyeball to eyeball" with the Japanese, it is America that blinks. By contrast, there is no evidence that the Japanese have ever made more than a symbolic economic concession for the sake of "the relationship."

The U.S. State Department, which has assumed the role of guardian of the relationship, regularly takes Japan's side in trade and economic disagreements between the two nations. And just as regularly, U.S. economic interests are sacrificed on "foreign policy" grounds—"the relationship."

JAPAN IS DIFFERENT

In international dicussions, at different times and in different industries, the Japanese have argued that they are "different" as a way to maintain their protected domestic market. Here are some of the ways in which Japan is different:

In 1978, the Japanese government refused to permit imports of American-made blood analyzers because, it asserted, the Japanese have different blood.

In 1986, foreign companies were not allowed to participate in the land reclamation work of the Kansai Airport construction project because, the Japanese argued, they have different dirt.

In 1986, MITI attempted to prevent U.S and European ski manufacturers from offering their products in Japan because Japan has different snow.

in 1987, U.S. garbage disposals were kept out of the Japanese market because Japan has a different sewage system.

In 1987, U.S. beef imports to Japan were limited because the Japanese have intestines that are a different length from other people's.

In 1990, the Japanese tired to keep out U.S. lumber exports, because the wood wouldn't withstand Japanese earthquakes, which are different from those in the United States.

HOW TO MAKE AN AMERICAN GOVERNOR A JAPANESE LOBBYIST

When Governor Victor Atiyeh of Oregon left office in 1987, he became a registered lobbyist for Seiko Epson Corporation and Fujitsu America, Inc. Actually, the Japanese have little need to hire former governors as lobbyists since incumbents now devote much of their energies to wooing the Japanese. More states now have offices in Tokyo than in Washington, D.C. One of the biggest lures is their state's congressional clout in Washington.

In 1986, Eddie Mahe, Jr., a leading Republican political consultant and a paid adviser to the Japanese embassy in Washington, addressed Japanese businesspeople on how to transform governors who seek new Japanese investment for their states into lobbyists for Japan. "Simply stated," Mahe said, "Each and every one of you who has a business, or influences a business, has the opportunity to come to the United States and be a star."

Mahe recommends that the Japanese follow three simple principles.

The first principle: The U.S. economy is driven by politics. Most politics are local. And the most important local issue is always jobs. Thus couch all issues in terms of jobs. Said Mahe, "If you were going into Iowa and opening up a plant with 250 jobs, I guarantee you could get in to see the governor of Iowa if you wanted to do that. If at that time Congress was considering some kind of trade bill that would affect you as a businessman opening up that plant and creating those 250 jobs, the governor of Iowa would lobby for you,"

The second principle: Just as politics is local, so are matters of trade. Few Americans understand the pros and cons of the abstract theories of "free trade" versus "protectionism." In practice. North Carolinians think that trade policy means textiles. Iowans think it means beef or corn. In Michigan, it means automobiles. Couch trade issues in real rather than theoretical terms.

The third principle: When choosing a plant site, meet with as many governors and other elected officials from as many states and communities as possible. Why? Because even those officials whose communities are not selected will remain friendly and hope to have better luck next time. Mahe told the Japanese businesspeople, "If you understand and accept how open the American political system is and how accessible our elected public officials are, you really have a great opportunity if you are thinking of investing in or opening up a plant in the United States."

By Mr. DOLE (for himself, Mr. RIEGLE, Mr. WILSON, Mr. COCHRAN, Mr. DURENBERGER, Mr. CHAFEE, Mr. PRESSLER, Mr. D'AMATO, Mr. HEINZ, Mr. DECONCINI Mr. HATCH, Mr. GRAHAM, and Mr. BOSCHWITZ):

S. 3102. A bill to amend title XVI of the Social Security Act to permit disabled and elderly people to maximize their independence; to the Committee on Finance.

SSI INDEPENDENCE ACT FOR ELDERLY AND DISABLED AMERICANS

Mr. DOLE. Mr. President, I rise to introduce the Social Security Independence Maximization Act for Americans with disabilities. This legislation will build upon the strides we have made thus far in refinining the Social Security Act as it pertains to disability and eliminating the disincentives that remain. During consideration of the 1989 Budget Reconciliation package, Congress included provisions for Social Security disability income [SSDI] recipients to buy into the Medicare system. Many eligible participants receiving SSDI benefits wanted to return to work but were concerned that the loss of SSDI benefits would cause too great a risk. While monthly cash benefits were a concern—the loss of access to health insurance was a priority Congress responded to.

Providing access to health insurance is important. However, disincentives still remain and must be addressed. The SSI Independence Maximization Act will provide families with a disabled member a strong and secure role in present and future planning decisions for a family member with a disability by codifying current Social Security rules. Family members with dis-

abled dependents can plan for their child's future by providing informed contributions either directly or through trusts to Social Security Income. Recipients without such contributions jeopardize their eligibility for supplemental security income [SSI] and Medicaid. Until now, these rules have not appeared in statute and have created uncertainty for families and concerned individuals wishing to plan today for a secure future for the dependent family member.

This legislation will allow an SSDI recipient to opt into the SSI section of the 1619 Work Incentive Program if he or she is otherwise eligible for SSI. Six technical amendments to the 1619 Work Incentive Program are made which will remove disincentives that have developed since the program's inception. Also, the bill includes an important provision codifying current trust provisions within the SSI program so that parents and other family members may establish a trust fund for inheritance by the family member with a disability.

Congress must continue to refine its disability policies so they are consistent with the recently passed Americans with Disabilities Act. The message of the ADA is clear: We are tearing down barriers to increase opportunities for people with disabilities to participate in American society. Employment is clearly the key to integration into the mainstream—eliminating disincentives toward these goals will strengthen the workforce and abolish dependency.

The provisions in this act are designed to improve the way the current SSI program is working and assist individuals attempting, through the use of the Section 1619 work incentive provisions, to become more independent as productive workers.

Mr. President, I ask unanimous consent that the test of the bill and a summary of its provisions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES TO SOCIAL SECURITY ACT.

(a) SHORT TITLE.—This Act may be cited as the "SSI Independence Act for Elderly and Disabled Americans".

(b) TABLE OF CONTENTS.—

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 2. CERTAIN CONTRIBUTIONS RECEIVED BY RECIPIENT OF SSI BENEFITS EXCLUDED FROM INCOME.

(a) CONTRIBUTIONS (OTHER THAN CASH PAID DIRECTLY TO THE RECIPIENT) MADE TO OBTAIN SOCIAL SERVICES, CLOTHING, OR FOR MAINTENANCE OF HOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting a semicolon; and

(3) by inserting after paragraph (16) the following:

"(17) contributions other than cash paid directly to the recipient which are for the purchase of—

"(A) any service (other than medical) including those which are—

"(i) designed to assist an eligible individual who has any physical or mental impairment to function in society on a level comparable to that of an individual who is not so impaired; and

"(ii) provided by a recognized social services or educational agency, whether governmental or private, and whether nonprofit or operated for profit;

"(B) vocational rehabilitation services;

"(C) private medical insurance coverage where the private insurer is to be the first payor;

"(D) medical care;

"(E) transportation;

"(F) educational services (including continuing adult education, postsecondary education, and vocational education), including books, tuition, laboratory fees, and any other costs related to education except those for room and board;

"(G) personal assistance or attendant care services; or

"(H) services or equipment related to the quality and liveability of the individual's shelter and which are not for the purposes of rent, mortgage, real property taxes, garbage collection and sewerage services, water, heating fuel, electricity, or gas; but permissible contributions include—

"(i) payment for telephone services;

"(ii) payment for repairs to shelter;

"(iii) payment for repairs or replacement of heating source in shelter; and

"(iv) purchase of any appliance, the result of which will not result in the individual's household goods exceeding the amount which has been determined by the Secretary to be reasonable under section 1613(a)(2)(A); and

"(18) contributions of clothing from any source.".

(b) RULES GOVERNING CIRCUMSTANCES UNDER WHICH CONTRIBUTION OF A SHELTER IS TO BE COUNTED AS INCOME.—Section 1612(a)(2) (42 U.S.C. 3182a(a)(2)) is amended—

(1) in subparagraph (E), by striking "; and" and inserting ", except that receipt of any sum or property as a result of inheritance, gift, or support shall be treated as income in the month in which the individual legally has access to the fund to use for the individual's own benefit;";

(2) in subparagraph (F), by striking the period and inserting "; and"; and

(3) by inserting at the end the following:

"(G) the value of an ownership interest in a shelter received, but the value of such interest shall be included in income only in the month of receipt and pursuant to the following rules:

"(i) If the individual resides in the shelter at the time of the conveyance, the limitations established by the Secretary for presuming a maximum value for in-kind support shall apply.

"(ii) If the individual does not reside in the shelter at the time of the conveyance, the full value of the interest shall be income in the month of receipt.".

SEC. 3. CERTAIN TRUSTS NOT TO BE COUNTED AS A RESOURCE AVAILABLE TO THE RECIPIENT; TRUST NOT INCOME IN MONTH IN WHICH IT IS ESTABLISHED.

(a) CIRCUMSTANCES UNDER WHICH TRUST CREATED FOR BENEFIT OF RECIPIENT SHALL NOT BE COUNTED AS A RESOURCE.—Section 1613(a) (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and "; and

(3) by inserting after paragraph (8) the following:

"(9) any amount set aside in a legally cognizable trust, either by the individual or on behalf of the individual, for the purpose of providing assistance to the individual, so long as the individual does not have access to the assets of the trust. An individual does not have access to assets held in a trust if the trustee, and not the individual, has the discretion to determine when such assets ought to be distributed to or for such individual and the amount of any such distribution. The authority for discretion by the trustee to use the assets of the trust for the support and maintenance of the individual, or to supplement any benefits available to the individual under this Title XVI or other public benefits, shall not mean that the individual has access to these assets. The fact that the trustee is also the representative payee for the individual or relative of the individual shall not be construed as causing trust assets to be accessible to the individual if all the other requirements of this subsection are satisfied.".

(b) CREATION OF TRUST NOT TO BE COUNTED AS INCOME IN MONTH OF CREATION; LATER PLACEMENT OF FUNDS OR PROPERTY IN THE TRUST ALSO NOT COUNTED AS INCOME.—Sec-

tion 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of the paragraph (17) added by section 2(a)(3) of this Act;

(2) by striking he period at the end of the paragraph (18) added by section 2(a)(3) of this Act and inserting "; and"; and

(3) by inserting after the paragraphs added by section 2(a)(3) of this Act the following:

"(19) any funds or other property placed in a trust for the benefit of the individual shall not be treated as income either at the time of creation of the trust or if placed in the trust after its creation.".

SEC. 4. NOTIFICATION OF SSI APPLICANTS AND RECIPIENTS OF THE CONSEQUENCES OF VARIOUS ACTIONS TO THEIR ELIGIBILITY FOR BENEFITS UNDER TITLE XVI AND TITLE XIX.

Section 1631 (42 U.S.C. 1383) is amended by adding at the end the following:

"(n)(1) The Secretary shall, in accordance with paragraph (2), provide notice to applicants for, and recipients of, benefits under this title—

"(A) that there are contributions which can be made on behalf of the applicant or recipient which will not affect the individual's eligibility for benefits under this title, and list those contributions;

"(B) that there are other contributions, such as contributions of food or shelter provided by a person or group other than a nonprofit source, which can be provided to an individual and will not be valued at more than one-third of the amount of benefits payable to the individuals under section 1611(b), plus $20;

"(C) that support or maintenance provided pursuant to section 1612(b)(13) by a private nonprofit agency or meeting the requirements for home energy assistance set forth in that provision are not counted as income;

"(D) that it is possible for an individual or others to establish a trust to benefit the individual without affecting the individual's eligibility for benefits under this title and to make distributions from that trust without affecting eligibility, if the rules of this title with regard to permissible contributions to such trusts are followed;

"(E) that, notwithstanding subparagraph (D), the individual should know that if the individual establishes the trust on his or her own behalf, the eligibility of the individual for benefits under title XIX may be affected thereby, and such notice shall include the following: 'If the individual transfers the money into a trust, it will no longer be a resource as long as the individual does not have access to the trust funds, except through a trustee. Although the penalty associated with such transfers was eliminated for SSI purposes for transfers made on or after July 1, 1988, such a transfer may still affect the individual's eligibility for Medicaid. The uncompensated value (the difference between the fair market value of the item transferred and the amount received for the item) of the money transferred into the trust may continue to be counted toward the statutory resources limit for a period of 30 months from the date of the transfer. In addition, the trust itself may be considered to be a Medicaid qualifying trust, which may also disqualify the person from Medicaid.'; and

"(F) that it is the Secretary's rule that 'cash is cash' and that cash will be counted as income if it is given directly to a recipient unless there is a restriction upon the recipient's use of the funds in which the donor states that if the funds are not spent as specified, the donor will require that the funds be repaid.

"(2) In designing the notices and pamphlets required by this section, the Secretary shall include references to all provisions of this title as well as any other statutes which provide for exclusions from income and resources for purposes of this title. The Secretary shall design such notices and pamphlets with differing degrees of detail so that individuals will receive a simple, understandable notice, but can seek supplementary, detailed information from the Secretary. The simple notices shall specifically inform the individual of the availability of such supplementary information and the source of such information.

"(3) The Secretary shall provide the notice required by paragraph (1)—

"(A) to applicants, at the time of application; and

"(B) to recipients, within 6 months after the date of the enactment of this subsection, and annually thereafter.".

SEC. 5. EFFECTIVE DATE.

The amendments made by sections 2, 3, and 4 shall take effect on the 1st day of the 1st month beginning after the date this Act becomes law.

SEC. 6. BENEFITS FOR PERSONS WHO LOSE SOCIAL SECURITY DISABILITY BENEFITS.

(a) IN GENERAL.—Part A of title XVI (42 U.S.C. 1382 et seq.) is amended by inserting after section 1619 the following:

"SEC. 1619A. BENEFITS FOR PERSONS WHO LOSE SOCIAL SECURITY DISABILITY BENEFITS.

"Each individual—

"(1) who received benefits under subsection (d), (e), or (f) of section 202 based on disability, or disability insurance benefits under section 223;

"(2) whose benefits under such provision are not payable in a month by reason of the performance of substantial gainful activity; and

"(3) who files an application for benefits under this title during the 12-month period beginning with the first month in any period of months for which a benefit described in paragraph (1) is not payable because of the performance of substantial gainful activity,

shall, for purposes of the requirement in section 1619 of a prior month of eligibility for benefits under section 1611, be deemed to have been eligible for benefits under section 1611 in the month immediately preceding such 12-month period, and such application shall be deemed to have been filed in such immediately preceding month.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to benefits under section 1619 of the Social Security Act for months after June 1990.

SEC. 7. CONTINUING DISABILITY OR BLINDNESS REVIEWS NOT REQUIRED MORE THAN ONCE ANNUALLY.

(a) IN GENERAL.—Section 1619 (42 U.S.C. 1382h) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) Subsection (a)(2) and section 1631(j)(2)(A) shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.".

(b) CONFORMING AMENDMENT.—Section 1631(j)(2)(A) (42 U.S.C. 1383(j)(2)(A)) is amended by inserting "(other than subsection (c) thereof)" after "1619" the first place such term appears.

SEC. 8. INAPPLICABILITY OF SPOUSAL DEEMING UNDER SECTION 1619(b).

Section 1619(b)(1)(B) (42 U.S.C. 1382h(b)(1)(B)) is amended by inserting "(determined without regard to section 1614(f)(1))" after "individual".

SEC. 9. ATTAINMENT OF AGE 65 NOT TO SERVE AS BASIS FOR TERMINATION OF ELIGIBILITY UNDER SECTION 1619(b).

Section 1619(b) (42 U.S.C. 1392h(b)) is amended by striking "under age 65".

SEC. 10. STATE SUPPLEMENTATION FOR INDIVIDUALS UNDER SECTION 1619.

Section 1616 (42 U.S.C. 1382e) is amended—

(1) in subsection (b)(1), by inserting "(including benefits under section 11619)" after "title"; and

(2) in subsection (c)(3), by striking "have the option of making" and inserting "make".

SEC. 11. EXCLUSION FROM INCOME OF IMPAIRMENT-RELATED WORK EXPENSES IN STATE SUPPLEMENTATION-ONLY CASES.

Section 1612(b)(4)(B)(ii) (42 U.S.C. 1382a(b)(4)(B)(ii)) is amended by striking "(for purposes" and all that follows through eligibility)".

SEC. 12.. TREATMENT OF ROYALTIES HONORARIA AND SCHOLARSHIPS AS EARNED INCOME.

Section 1612(a) (42 U.S.C. 1382a(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (C), by striking "and" the 2nd place such term appears; and

(B) by adding at the end the following:

"(E) any royalty which is earned in connection with any publication of an individual's work, and any portion of any grant, honorarium, scholarship, or fellowship which is not used for tuition or education expenses; and"; and

(2) in paragraph (2)(F), by inserting after "interest, and" the following: ", subject to the exception in subsection (a)(1)(E),".

SEC. 13. EFFECTIVE DATE.

The amendments made by section 7 through 12 shall apply to benefits payable for months after the month in which this Act becomes law.

INDEPENDENT LIVING TRUST AND CONTRIBUTIONS PROVISIONS

The intent of this provision is to codify current Social Security rules which dictate when direct or indirect trust contributions will not be counted as income or resources for SSI eligibility. Under current law, there is no assurance that these rules will exist in the future, therefore they must be codified in statute.

The provision will:

1. Codify those rules and explicitly permit contributions other than food, shelter and cash to be excluded as income or resources from SSI eligibility.This includes such items as social services, vocational rehabilitation services, medical care, transportation, educational services, personal assistance or attentant care services, and services or equipment related to the quality or livability of the individual's shelter which are not for the purposes of rent, mortgage, real estate property, taxes, garbage collection, sewage services, water, heating fuel, electricity or gas.

2. Adds one new minor improvement to the current rules:

(a) Allows an SSI recipient to receive clothing without it having an affect on the person's benefits.

3. Permits a beneficial trust to be established to continue to provide assistance to the SSI recipient once his parents have passed away. This beneficial trust will not be counted as a resource or as income as long as the SSI recipient does not have access to the trust.

4. Requires SSA to develop materials which explain the rules to SSI recipients and their families so that they will know what types of contirubtions will be allowed by SSA without jeopardizing the SSI recipient's eligibility for SSI and Medicaid.

OPTION FOR SSDI RECIPIENTS TO PARTICIPATE IN SSI AND THE 1619 WORK INCENTIVE PROGRAM

Allows SSDI recipients the option to come into the SSI program after completion of their trial work period when the recipient is no longer receiving SSDI cash benefits.

Allows the SSDI recipient to move into SSDI and the 1619 Work Incentive Program without first having a month of regular SSI benefits.

This option would only apply to those individuals who meet the SSI income and resource test under current law.

Gives the SSDI recipient 12 months to spend down his resources in order to qualify for SSI.

TECHNICAL AMENDMENTS TO SECTION 1619 (THE SSI WORK INCENTIVE PROGRAM)

This provision consists of six technical amendments to remove barriers to work that have developed since this program was made permanent. The amendments include:

1. Clarify that a Continuing Disability Review will occur no more than once every 12 months for 1619 participants.

2. Eliminate spousal deeming so that an SSI recipient can qualify for 1619 based on his income alone without interference of the spouse's income in any way.

3. Provide that impairment related work expenses will be deducted in cases where the disabled person is dual eligible (receiving both SSI and SSDI) but receives only state supplementation, and receives no federal dollars.

4. Provide that a disabled person who turns 65 and had been participating in the 1619 program may continue to participate.

5. Require that in calculating the breakeven point for 1619(a) states' supplementation must be included. Currently, it is optional and 8 states do not count the supplementation.

6. Provide that scholarships, fellowships, honorarium, and the royalties or other payments an SSI recipient receives from a first book will be treated as earned income and not counted against the SSI benefits.

Mr. WILSON. Mr. President, today I join the distinguished Republican leader, Senator DOLE, in introducing the SSI Independence Maximization Act.

Without the Supplemental Security Income [SSI] Program, millions of elderly, blind, and disabled Americans across the Nation would find themselves without basic life support.

That is why Congress consistently has kept SSI payments off the budget cutting table.

In California, well over 800,000 individuals will be served under the State SSI Program this year.

And, Mr. President, I am proud to represent the State which provides the highest SSI benefit levels of the top 10 most populous States.

In 1989, average individual benefit levels were $602 for the elderly and disabled and $673 for the blind. Couples benefits for the elderly and disabled were $1,116, 40 percent more than the next highest State benefit level, and $1,312 for the blind, over 50 percent higher than the next highest State benefit level.

Mr. President, the Republican leader has outlined the legislation in his remarks so I will not take too much time to recite all of the specific provisions of the legislation we are introducing today.

But briefly, Mr. President, the SSI Independence Maximization Act will codify existing direct and trust contributions rules and ease transition from the SSDI program to the SSI and Social Security Act section 1619 Work Incentive Program. In addition, the bill will allow SSI recipients to accept contributions of clothing without losing benefits.

In essence, this legislation will enable SSI recipients to pursue their goals secure in the knowledge that existing SSI rules will not be changed in the middle of the game. For many, it will guarantee an opportunity to move a step closer to independence.

I urge my colleagues to join in supporting the SSI Independence Maximization Act.

By Mr. DOLE (for himself and Mr. MITCHELL):

S.J. Res. 269. Joint resolution designating 1991 as the "Year of Thanksgiving for the Blessings of Liberty"; to the Committee on the Judiciary.

YEAR OF THANKSGIVING FOR THE BLESSINGS OF LIBERTY

Mr. DOLE. Mr. President, I am pleased to join with the distinguished majority leader, Senator MITCHELL, in introducing a joint resolution declaring 1991 as a "Year of Thanksgiving for the Blessings of Liberty."

Next year, our country will celebrate the 200th anniversary of the ratification of that remarkable statement of individual liberty, the Bill of Rights.

Unlike many past and present national constitutions and charters, the Bill of Rights is not a statement of the responsibilities and rights of government. Instead, it is a statement of the limits of government beyond which the rights of the individual citizen cannot be abridged.

Freedom of speech, freedom of association, freedom of religious belief—these are the blessings of liberty that all Americans enjoy each day. And they are blessings that we, as a nation, will celebrate next year, the bicentennial of the Bill of Rights.

Mr. President, during 1991, it is only appropriate that the Congress and the American people take the affirmative step of reflecting upon our cherished freedoms, giving thanks for the foresight of our Founding Fathers, and recommitting ourselves to the vigilant protection of the liberties guaranteed by the first 10 amendments to our Nation's Constitution.

Mr. President, I ask unanimous consent that the full text of the joint resolution be printed in the RECORD.

There being no objection the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 369

Whereas the people of the United States have expressed gratitude by celebrating a national season of thanksgiving since the 17th century;

Whereas the War for Independence was won and the Constitution written and adopted to secure the blessings of liberty for citizens;

Whereas after the first Congress drafted a Bill of Rights to be added to the Constitution, established a Federal judicial system, created departments of administration, and established the Government of the United States under the Constitution, it requested President Washington to issue a proclamation of national thanksgiving;

Whereas in the first Presidential proclamation, President Washington called on the people of the United States to acknowledge, by thanksgiving, the blessings of civil and religious liberty;

Whereas by December 15, 1791, three-quarters of the United States had ratified the proposed Bill of Rights;

Whereas 1991 is recognized as the official observance of the bicentennial of the ratification of the Bill of Rights; and

Whereas for 200 years the people of the United States have enjoyed the blessings of liberty under the Constitution and the Bill of Rights, embodied in the first 10 amendments of the Constitution: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1991 is designated as the "Year of Thanksgiving for the Blessings of Liberty," and the President is authorized and requested to issue a proclamation calling upon the Governors of the several States, the chief officials of local governments, and the people of the United States to observe the year with appropriate ceremonies and activities.

Mr. MITCHELL. Mr. President, next year, 1991, marks the 200th anniversary of the ratification of the Bill of Rights, the most concise and eloquent summary of the liberties of Americans ever written.

It is fitting, therefore, to declare the anniversary year of the passage of the Bill of Rights a "Year of Thanksgiving for the Blessings of Liberty." I am pleased to sponsor the joint resolution making that declaration.

Although we are all familiar with the words of the Bill of Rights today, it is worthwhile to remember that their passage by the Congress 200 years ago was fraught with controversy and conflict.

Those who opposed a federal government sought to increase the number of amendments enormously, so as to bring the entire system into disrepute.

Those who were concerned that the enumeration of some rights would lead to a denial of those not enumerated opposed the entire idea.

Robert Morris, a Senator from Pennsylvania, even doubted that "the nonsense they call amendments" would ever be ratified. He said:

I never expect that any part of it will go through the various Trials which it must pass before it can become a part of the Constitution.

Fortunately for all Americans, Senator Robert Morris was wrong. The 10 amendments we call the Bill of Rights were speedily passed and ratified by the States. The Bill of Rights has served as the bulwark of our liberties ever since.

The events of the past year have demonstrated dramatically that human beings hunger for freedom. The people of Eastern Europe and of the Soviet Union itself are demanding the fundamental human freedoms of speech, conscience, and movement.

We Americans take for granted those freedoms, because we have been able to enjoy the blessings of liberty for two centuries.

The bicentennial anniversary of our Bill of Rights is a good opportunity to remind ourselves that the American liberties won by the Revolutionary War were finally secured, not by war, but by the debate and decisions of a freely elected legislature.

Our system is far from perfect, but its accomplishments show that so long as the desire for liberty remains at the heart of our system, we can continue to secure and enjoy the blessings of liberty for ourselves and our descendants.

I hope my colleagues will agree and join in sponsoring the joint resolution to declare 1991 a "Year of Thanksgiving for the Blessings of Liberty."

ADDITIONAL COSPONSORS

S. 176

At the request of Mr. HEINZ, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 176, a bill to amend the Foreign Agents Registration Act of 1938 to strengthen the registration and enforcement requirements of that act.

S. 416

At the request of Mr. DOMENICI, the names of the Senator from Texas [Mr. BENTSEN] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 416, a bill to provide that all Federal civilian and military retirees shall receive the full cost-of-living adjustment in annuities payable under Federal retirement systems for fiscal years 1990 and 1991, and for other purposes.

S. 434

At the request of Mr. REID, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 434, a bill to prohibit a State from imposing an income tax on the pension income of individuals who are not residents or domiciliaries of that State.

S. 435

At the request of Mr. REID, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 435, a bill to amend section 118 of the Internal Revenue Code to provide for certain exceptions from certain rules determining contributions in aid of construction.

S. 730

At the request of Mr. COATS, the names of the Senator from Montana [Mr. BURNS], the Senator from Nevada [Mr. REID], the Senator from Rhode Island [Mr. PELL], the Senator from Michigan [Mr. LEVIN], the Senator from Alabama [Mr. HEFLIN], the Senator from Washington [Mr. ADAMS], the Senator from Hawaii [Mr. INOUYE], the Senator from South Dakota [Mr. DASCHLE], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of S. 730, a bill to request the President to award gold medals on behalf of Congress to Frank Capra, James M. Stewart, and Fred Zinnemann, and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 731

At the request of Mr. COATS, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Montana [Mr. BURNS], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 731, a bill to request the President to award a gold medal on behalf of Congress to Robert Wise and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 977

At the request of Mr. DOMENICI, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 977, a bill entitled the "White House Conference on Small Business Authorization Act".

S. 1214

At the request of Mr. DECONCINI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1214, a bill to provide that ZIP code boundaries may be redrawn so that they do not cross the boundaries of any unit of general local government.

S. 1400

At the request of Mr. KASTEN, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 1400, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 1676

At the request of Mr. PELL, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1676, a bill to strengthen the teaching profession, and for other purposes.

S. 1808

At the request of Mr. BREAUX, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1808, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 2044

At the request of Mr. BIDEN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 2044, a bill to require tuna products to be labeled respecting the method used to catch the tuna, and for other purposes.

S. 2098

At the request of Mr. BENTSEN, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 2098, a bill to amend title XVIII of the Social Security Act to provide medicare coverage of Erythropoietin when self administered.

S. 2252

At the request of Mr. SIMON, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 2252, a bill to encourage and facilitate entry into the teaching profession, and for other purposes.

S. 2307

At the request of Mr. RIEGLE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2307, a bill to require the Secretary of Health and Human Services to provide intensive outreach and other services and protections to homeless individuals.

S. 2356

At the request of Mr. SYMMS, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 2356, a bill to amend the Internal Revenue Code of 1986 to allow tax-exempt organizations to establish cash and deferred pension arrangements for their employees.

S. 2459

At the request of Mr. BENTSEN, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2459, a bill to amend title XIX of the Social Security Act to provide improved delivery of health care services to low-income children by extending Medicaid coverage to certain low-income children, and for other purposes.

S. 2497

At the request of Mr. DECONCINI, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2497, a bill to establish a demon-

stration program to allow drug-addicted mothers to reside in drug abuse treatment facilities with their children, and to offer such mothers new behavior and education skills which can help prevent substance abuse in subsequent generations.

S. 2515

At the request of Mr. SIMON, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2515, a bill to amend the Health Care Quality Improvement Act of 1986 to prohibit discrimination against international medical graduates, to provide for the establishment of a National Repository of Physician Records, and for other purposes.

S. 2520

At the request of Mr. CHAFEE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2520, a bill to establish permanent Federal and State drug treatment programs to criminal offenders, and for other purposes.

S. 2575

At the request of Mr. KERRY, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 2575, a bill to urge the Secretary of State to negotiate a ban on mineral resource activities in Antarctica, and for other purposes.

S. 2619

At the request of Mr. GLENN, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 2619, a bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare Program.

S. 2641

At the request of Mr. RIEGLE, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 2641, a bill to amend title XVIII of the Social Security Act to provide for simplification in the purchase of Medicare supplemental insurance.

S. 2725

At the request of Mr. SIMPSON, his name was withdrawn as a cosponsor of S. 2725, a bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Care Act.

S. 2737

At the request of Mr. ARMSTRONG, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2737, a bill to require the Secretary of the Treasury to mint a silver dollar coin in commemoration of the 38th anniversary of the ending of the Korean war and in honor of those who served.

S. 2754

At the request of Mr. BIDEN, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 2754, a bill to combat violence and crimes against women on the streets and in homes.

S. 2782

At the request of Mr. KERRY, the names of the Senator from Maryland [Ms. MIKULSKI], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 2782, a bill to amend the Coastal Zone Management Act of 1972 to authorize appropriations for fiscal years 1991 through 1995 and to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce programs for the improvement of coastal zone water quality, and for other purposes.

S. 2796

At the request of Mr. COHEN, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 2796, a bill to amend title IV of the Higher Education Act of 1965 to allow resident physicians to defer repayment of their title IV student loans while completing a resident training program accredited by the Accreditation Council for Graduate Medical Education or the Accrediting Committee of the American Osteopathic Association.

S. 2822

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 2822, a bill to promote and strengthen aviation security, and for other purposes.

S. 2901

At the request of Mr. PRYOR, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2901, a bill to amend the Internal Revenue Code of 1986 to simplify the applications of the tax laws with respect to employee benefit plans, and for other purposes.

S. 2946

At the request of Mr. KENNEDY, the names of the Senator from Maryland [Mr. SARBANES] and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 2946, a bill to amend the Public Health Service Act to revise and extend the program establishing the National Bone Marrow Donor Registry, and for other purposes.

S. 2957

At the request of Mr. D'AMATO, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 2957, a bill entitled the "Criminal Alien Deportation and Exclusion Act."

S. 2997

At the request of Mr. BOSCHWITZ, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2997, a bill to revise and extend the programs of assistance under title X of the Public Health Service Act, and for other purposes.

S. 3002

At the request of Mr. MOYNIHAN, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 3002, a bill to amend title XIX of the Social Security Act to permit coverage of residential drug treatment for pregnant women and certain family members under the medicaid program, and for other purposes.

S. 3025

At the request of Mr. GLENN, the names of the Senator from Maine [Mr. COHEN], the Senator from New York [Mr. D'AMATO], the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. LEAHY], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 3025, a bill to amend titles 10 and 37, United States Code, to make members of the Armed Forces involved in Operation Desert Shield or similar operations eligible for certain benefits and to make members of the reserve components of the Armed Forces and retired members of the Armed Forces eligible for certain benefits when ordered to active duty in connection with a mobilization; and for other purposes.

S. 3030

At the request of Mr. HEFLIN, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 3030, a bill to provide disaster assistance for agricultural producers, and for other purposes.

S. 3059

At the request of Mr. DECONCINI, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Virginia [Mr. WARNER], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 3059, a bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges.

S. 3068

At the request of Mr. SYMMS, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 3068, a bill to establish the Office of Take Pride in America, and for other purposes.

SENATE JOINT RESOLUTION 305

At the request of Mr. THURMOND, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from New York [Mr. D'AMATO], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Joint Resolution 305, a joint resolution to designate the month of September 1990, as "National Awareness Month of Children with Cancer."

SENATE JOINT RESOLUTION 328

At the request of Mr. SPECTER, the names of the Senator from Tennessee

[Mr. SASSER], the Senator from Mississippi [Mr. COCHRAN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Nebraska [Mr. EXON], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of Senate Joint Resolution 328, a joint resolution designating October 1990 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 342

At the request of Mr. SIMON, the names of the Senator from Idaho [Mr. SYMMS], the Senator from New Mexico [Mr. DOMENICI], the Senator from Louisiana [Mr. BREAUX], the Senator from Connecticut [Mr. DODD], the Senator from Virginia [Mr. WARNER], the Senator from Massachusetts [Mr. KERRY], the Senator from Idaho [Mr. MCCLURE], the Senator from Oregon [Mr. PACKWOOD], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Maine [Mr. COHEN], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Alabama [Mr. HEFLIN], the Senator from Georgia [Mr. FOWLER], the Senator from Oregon [Mr. HATFIELD], the Senator from Oklahoma [Mr. BOREN], the Senator from Delaware [Mr. ROTH], the Senator from Rhode Island [Mr. PELL], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of Senate Joint Resolutions 342, a joint resolution designating October 1990 as "Ending Hunger Month."

SENATE JOINT RESOLUTION 344

At the request of Mr. THURMOND, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from North Carolina [Mr. SANFORD], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of Senate Joint Resolution 344, a joint resolution to designate the week of November 18 through 24, 1990, as "National Wild Turkey Week" and November 22, 1990, as "National Wild Turkey Day."

SENATE JOINT RESOLUTION 346

At the request of Mr. BOSCHWITZ, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Joint Resolution 346, a joint resolution to designate October 20 through 28, 1990, as "National Red Ribbon Week for a Drug-Free America."

SENATE JOINT RESOLUTION 349

At the request of Mr. DECONCINI, the names of the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Utah [Mr. HATCH], the Senator from Florida [Mr. GRAHAM], the Senator from North Carolina [Mr. HELMS], the Senator from Nevada [Mr. REID], the Senator from Illinois [Mr. SIMON], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Joint Resolution 349, a joint resolution designating October 1990, as "Italian-American Heritage and Culture Month."

SENATE JOINT RESOLUTION 363

At the request of Mr. RIEGLE, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Minnesota [Mr. BOSCHWITZ] were added as cosponsors of Senate Joint Resolution 363, a joint resolution to designate the week of October 22 through October 28, 1990, as the "International Parental Child Abduction Awareness Week."

SENATE JOINT RESOLUTION 364

At the request of Mr. REID, the names of the Senator from Pennsylvania [Mr. SPECTER], the Senator from Virginia [Mr. WARNER], the Senator from Alaska [Mr. STEVENS], the Senator from Rhode Island [Mr. PELL], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of Senate Joint Resolution 364, a joint resolution to designate the third week of February 1991, as "National Parents and Teachers Association Week."

SENATE JOINT RESOLUTION 368

At the request of Mr. GLENN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Joint Resolution 368, a joint resolution to designate August 2, 1991, as "National Parents Against Drug Abuse Day."

SENATE CONCURRENT RESOLUTION 146

At the request of Mr. MOYNIHAN, the names of the Senator from Illinois [Mr. SIMON] and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of Senate Concurrent Resolution 146, a concurrent resolution expressing the sense of the Congress that the United States should pay its outstanding debt to the United Nations.

AMENDMENTS SUBMITTED

CHILDREN'S TELEVISION ACT

INOUYE (AND OTHERS) AMENDMENT NO. 2713

Mr. BRYAN (for Mr. INOUYE, for himself, Mr. HOLLINGS, and Mr. WIRTH) proposed an amendment to the bill (H.R. 1677) to require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Children's Television Act of 1990".

TITLE I—REGULATION OF CHILDREN'S TELEVISION

FINDINGS

SEC. 101. The Congress finds that—

(1) it has been been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

(2) as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children;

(3) the financial support of advertisers assists in the provision of programming to children;

(4) special safeguards are appropriate to protect children from overcommercialization on television;

(5) television station operators and licensees should follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience; and

(6) it is therefore necessary that the Federal Communications Commission (hereinafter referred to as the "Commission") take the actions required by this title.

STANDARDS FOR CHILDREN'S TELEVISION PROGRAMMING

SEC. 102.(a) The Commission shall, within 30 days after the date of enactment of this Act, initiate a rulemaking proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to the time devoted to commercial matter in conjunction with children's television programming. The Commission shall, within 180 days after the date of enactment of this Act, complete the rulemaking proceeding and prescribe final standards that meet the requirements of subsection (b).

(b) Except as provided in subsection (c), the standards prescribed under subsection (a) shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(c) After January 1, 1993, the Commission—

(1) may review and evaluate the advertising duration limitations required by subsection (b); and

(2) may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest.

(d) As used in this section, the term "commercial television broadcast licensee" includes a cable operator, as defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

CONSIDERATION OF CHILDREN'S TELEVISION SERVICE IN BROADCAST LICENSE RENEWAL

SEC. 103. (a) After the standards required by section 102 are in effect, the Commission shall, in its review of any application for renewal of a television broadcast license, consider the extent to which the licensee—

(1) has complied with such standards; and

(2) has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) In addition to consideration of the licensee's programming as required under subsection (a), the Commission may consider—

(1) any special nonbroadcast efforts by the licensee which enhance the educational

and informational value of such programming to children; and

(2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.

PROGRAM LENGTH COMMERCIAL MATTER

SEC. 104. Within 180 days after the date of enactment of this Act, the Commission shall complete the proceding known as "Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations", MM Docket No. 83-670.

TITLE II—ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

SHORT TITLE

SEC. 201. This title may be cited as the "National Endowment for Children's Educational Television Act of 1990".

FINDINGS

SEC. 202. The Congress finds that—

(1) children in the United States are lagging behind those in other countries in fundamental intellectual skills, including reading, writing, mathematics, science, and geography;

(2) these fundamental skills are essential for the future governmental and industrial leadership of the United States;

(3) the United States must act now to greatly improve the education of its children;

(4) television is watched by children about three hours each day on average and can be effective in teaching children;

(5) educational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees and permittees or cable television system operators do not have the economic incentive; and

(6) the Federal Government can assist in the creation of children's educational television by establishing a National Endowment for Children's Educational Television to supplement the children's educational programming funded by other governmental entities.

NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

SEC. 203. (a) Part IV of title III of the Communications Act of 1934 (47 U.S.C. 390 et seq.) is amended—

(1) by redesignating section 394 as section 393A;

(2) by redesignating subparts B, C, and D as subparts C, D, and E, respectively; and

(3) by inserting immediately after section 393A, as so redesignated, the following new subpart:

"Subpart B—National Endowment for Children's Educational Television

"ESTABLISHMENT OF NATIONAL ENDOWMENT

"SEC. 394. (a) It is the purpose of this section to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

"(b)(1) There is established, under the direction of the Secretary, a National Endowment for Children's Educational Television. In administering the National Endowment, the Secretary is authorized to—

"(A) contract with the Corporation for the production of educational television programming for children; and

"(B) make grants directly to persons proposing to create and produce educational television programming for children.

The Secretary shall consult with the Advisory Council on Children's Educational Television in the making of the grants or the awarding of contracts for the purpose of making the grants.

"(2) Contracts and grants under this section shall be made on the condition that the programming shall—

"(A) during the first two years after its production, be made available only to public television licensees and permittees and noncommercial television licensees and permittees; and

"(B) thereafter be made available to any commercial television licensee or permittee or cable television system operator, at a charge established by the Secretary that will assure the maximum practicable distribution of such programming, so long as such licensee, permittee, or operator does not interrupt the programming with commercial advertisements.

The Secretary may, consistent with the purpose and provisions of this section, permit the programming to be distributed to persons using other media, establish conditions relating to such distribution, and apply those conditions to any contract or grant made under this section. The Secretary may waive the requirements of subparagraph (A) if the Secretary finds that neither public television licensees and permittees nor noncommercial television licensees and permittees will have an opportunity to air such programming in the first two years after its production.

"(c)(1) The Secretary, with the advice of the Advisory Council on Children's Educational Television, shall establish criteria for making contracts and grants under this section. Such criteria shall be consistent with the purpose and provisions of this section and shall be made available to interested parties upon request. Such criteria shall include—

"(A) criteria to maximize the amount of programming that is produced with the funds made available by the Endowment;

"(B) criteria to minimize the costs of—

"(i) selection of grantees,

"(ii) administering the contracts and grants, and

"(iii) the administrative costs of the programming production; and

"(C) criteria to otherwise maximize the proportion of funds made available by the Endowment that are expended for the cost of programming production.

"(2) Applications for grants under this section shall be submitted to the Secretary in such form and containing such information as the Secretary shall require by regulation.

"(d) Upon approving any application for a grant under subsection (b)(1)(B), the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of the project for which the grant is made.

"(e)(1) The Secretary shall establish an Advisory Council on Children's Educational Televison. The Secretary shall appoint ten individuals as members of the Council and designate one of such members to serve as Chairman.

"(2) Members of the Council shall have terms of two years, and no member shall serve for more than three consecutive terms. The members shall have expertise in the fields of education, psychology, child development, or television programming, or related disciplines. Officers and employees of the United States shall not be appointed as members.

"(3) While away from their homes or regular places of business in the performance of duties for the Council, the members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with 5703 of title 5, United States Code.

"(4) The Council shall meet at the call of the Chairman and shall advise the Secretary concerning the making of contracts and grants under this section.

"(f)(1) Each recipient of a grant under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this section, including records which fully disclose the amount and the disposition by such receipient of the proceeds of such grant, the total cost of the project, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to a grant received under this section.

"(g) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this section, including those relating to the order of priority in approving applications for projects under this section or to determining the amounts of contracts and grants for such projects.

"(h) There are authorized to be appropriated $2,000,000 for fiscal year 1991 and $4,000,000 for fiscal year 1992 to be used by the Secretary to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year shall remain available for contracts and grants for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year.

"(i) For purposes of this section—

"(1) the term 'educational television programming for chldren' means any television program which is directed to an audience of children who are 16 years of age or younger and which is designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children; and

"(2) the term 'person' means an individual, partnership, association, joint stock company, trust, corporation, or State or local government entity.".

(b) Section 397 of the Communications Act of 1934 (47 U.S.C. 397) is amended—

(1) in paragraph (2) by striking "subpart C" and inserting in lieu thereof "subpart D"; and

(2) in paragraph (15)—

(A) by inserting "and subpart B" immediately after "Subpart A"; and

(B) by striking "subpart B, subpart C" and inserting in lieu thereof "subpart C, subpart D".

MOTOR VEHICLE FUEL EFFICIENCY ACT

SIMON (AND OTHERS) AMENDMENT NO. 2714

Mr. SIMON (for himself, Mr. MCCLURE, Mr. KENNEDY, Mr. RIEGLE, Mr. LEVIN and Ms. MIKULSKI) proposed an amendment to the bill (S. 1224) to amend the Motor Vehicle Information and Cost Savings Act to require new standards for corporate average fuel economy, and for other purposes, as follows:

On page 34, between lines 16 and 17, insert the following:

TERMINATED WORKERS

SEC. 15. (a) This section may be cited as the "Relief for Terminated Workers Act".

(b) Subject to the availability of appropriations, not later than 120 days after the date of the enactment of this Act, the Secretary of Labor shall, by regulation, establish for eligible terminated employees—

(1) a program of readjustment allowances substantially similar to the trade readjustment allowance program under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), and

(2) a program for job training and related services substantially similar to the program under part II of subchapter B of chapter 2 of title II of such Act (19 U.S.C. § 2295 and 2296), and

(3) a program for job search and relocation allowances substantially similar to the program under part III of subchapter B of chapter 2 of title II of such Act (19 U.S.C. § 2297 and 2298).

(c) The Secretary is authorized to enter into agreements with any State to assist in carrying out the programs under subsection (b) in the same manner as under subchapter C of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2311 et seq.).

(d) For purpose of this section, the term "eligible terminated employees" means any individual who is a member of a group of workers engaged in production of motor vehicles in the United States or related industries that the Secretary of Labor certifies, under the procedures described in subchapter A of chapter 2 of title II of the Trade Act of 1974, as eligible to apply for assistance under this section because the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm or subdivison have decreased absolutely; and

(3) compliance with the provisions of the Motor Vehicle Fuel Efficiency Act of 1990 were the primary cause of such total or partial separation, or threat thereof, and to such decline in sales or production.

(e) There is authorized to be appropriated for fiscal year 1991, and each of the next following 4 fiscal years, such sums as may be necessary, but not in excess of $50,000,000 for any such fiscal year, to carry out the provisions of this section. Such sums shall remain available until expended.

(f) An application for benefits under this section shall be filed after on or before the date that is 4 years after the date of enactment of this Act.

On page 34, line 18, strike out "15" and insert in lieu thereof "16".

NICKLES AMENDMENT NO. 2715

Mr. NICKLES proposed an amendment to the bill S. 1224, supra, as follows:

On page 34, between lines 16 and 17, insert the following:

GOVERNMENT PURCHASED VEHICLES

SEC. 15. Section 510 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2010) is amended to read as follows:

"GOVERNMENT PURCHASED VEHICLES

"SEC. 510. (a) All passenger automobiles acquired, on and after the expiration of the 120 days following the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1990, by any agency, department, or other instrumentality of the executive, legislative, or judicial branch of the United States Government in each fiscal year shall exceed the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, shall exceed the weighted national average fuel efficiency of new vehicles, determined by the Secretary in accordance with this Act, sold in the United States during the preceding model year. Commencing with model year 1995 and each model year thereafter, all light trucks purchased by any such department, agency, or instrumentality shall exceed the fuel economy standard applicable for such model year under section 515.

"(b) Effective March 31, 1991, no member of Congress or official of the legislative branch of the United States Government may utilize a passenger automobile acquired by any agency, department, or other instrumentality of the legislative branch of the United States Government unless such passenger automobile meet or exceeds the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, meets or exceeds the weighted national average fuel efficienty of new vehicles, determined by the Secretary in accordance with this Act, sold in the United States during the preceding model year.

"(c) As used in this section, the term 'acquired' means leased for a period of 60 continuous days or more, or purchased.

"(d) The provisions of this section shall not apply to any vehicle—

"(1) used by or for the protection of the President and Vice President of the United States;

"(2) used for law enforcement or other emergencies;

"(3) classified as a military vehicle;

"(4) which uses compressed natural gas;

"(5) which uses 85 percent or more methanol;

"(6) which uses 85 percent or more ethanol; or

"(7) which uses 100 percent propane or electricity.".

ROTH AMENDMENT NO. 2716

(Ordered to lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to the bill S. 1224, supra, as follows:

On page 27, between lines 11 and 12, insert the following:

"REMOVAL FROM SERVICE OF CERTAIN MOTOR VEHICLES

"SEC. 517. (a) Prior to the expiration of the 90-day period following the date of the enactment of this section, the Secretary shall issue such regulations as may be necessary to establish and implement a program encouraging the removal from use and the marketplace of motor vehicles manufactured prior to model year 1980.

"(b) Such program shall provide that any motor vehicle dealer who receives, as a trade-in on the sale by such dealer of a new motor vehicle, a motor vehicle of a model year prior to model year 1980, may remove such motor vehicle from use and the marketplace.

"(c) Such regulations shall further provide that upon certification by the motor vehicle dealer to the Secretary that the engine block and the chassis of the motor vehicle have been removed from use and the marketplace and destroyed in accordance with such program, the manufacturer of the new motor vehicle shall receive a credit to its corporate average fuel economy. Such credit shall equal the difference between the fuel economy of the new motor vehicle, and the motor vehicle removed from use and the marketplace.

"(d) Regulations under this section shall require proof from the motor vehicle dealer that the motor vehicle was destroyed in accordance with the regulation, and that the vehicle's identification number was removed from the registration list of the appropriate State or States.

"(e)(1) Such regulations under this section shall require the motor vehicle manufacturer to calculate and transmit to the Secretary the financial value per gallon credit.

"(2) No later than 30 days after receipt of the calculations under paragraph (1), the Secretary shall—

"(A) review and approve such calculations to determine if they are in accordance with regulations; and

"(B) if approved under subparagraph (A), publish such calculations in the Federal Register.

"(f) Such regulations shall require—

"(1) the motor vehicle manufacturer to rebate the financial value to an individual who traded in a motor vehicle of a model year prior to 1980 described under subsection (b);

"(2) that an individual trading in a motor vehicle shall have evidence that such vehicle has been registered and in use for 1 year prior to the date of trade-in; and

"(3) that an individual who purchases a new motor vehicle and certifies that the motor vehicle of a model year prior to 1980 was not traded in but was destroyed, shall receive such financial value.

"(g) Any person violating a regulation promulgated under this section shall be subject to a civil penalty assessed by the Secretary in an amount not to exceed $2,000.

"(h) No credits shall be given under this section on or after January 1, 1994.".

STEVENS AMENDMENT NO. 2717

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 1224, supra, as follows:

S. 1224 is amended by adding a new section at the end as follows:

4-WHEEL DRIVE VEHICLES

SEC. 16. Section 502(k)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(1)) is amended by deleting "after model year 1981 and before model year 1986" and inserting in lieu thereof "after model year 1991 and before model year 2006". It is further amended by deleting "under subsection (b) of this section applicable to 4-wheel drive automobiles" and inserting in lieu thereof "under any section applicable to 4-wheel drive automobiles".

Section 502(k)(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(3)) is amended by deleting "after model year 1985" and inserting in lieu thereof "after model year 2005".

WALLOP AMENDMENT NO. 2718

(Ordered to lie on the table)

Mr. WALLOP submitted an amendment intended to be proposed by him to the bill S. 1224, supra, as follows:

On page 27, line 12, insert the following:

"(c) The Secretary shall determine whether compliance with any Federal or State regulation or requirement (or any combination thereof) has the effect of reducing the fuel economy of any automobile. The Secretary shall make such determinations for the model year beginning after the enactment of this section and for each subsequent model year. Notwithstanding any other provision of the Act, if the Secretary determines that compliance with such regulations or requirements will reduce automobile fuel economy, he shall quantify the amount of the reduction and adjust the average fuel economy standards established under section 502, 514, and 515 by an amount that fully reflects such reduction. All determinations and adjustments required under this subparagraph shall be made no later than the beginning of the model year or years in which such regulations or requirements are applicable.

GRAMM AMENDMENTS NOS. 2719 THROUGH 2721

(Ordered to lie on the table.)

Mr. GRAMM submitted three amendments intended to be proposed by him to the bill S. 1224, supra, as follows:

AMENDMENT NO. 2719

At the appropriate place in the bill, insert the following new section:

SEC. . When the President determines that decreases in automobile safety will occur as a result of the implementation of the provisions of this act, the President, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, may waive such provisions of this act as he deems appropriate.".

AMENDMENT NO. 2720

At the appropriate place in the bill, insert the following new section:

SEC. . When the President determines that significant loss of American automobile industry related jobs will occur as a result of the implementation of the provisions of this act, the President, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, may waive such provisions of this act as he deems appropriate.".

AMENDMENT NO. 2721

At the appropriate place in the bill, insert the following new section:

SEC. . When the President determines that significant disruptions in domestic automobile production occur as a result of the implementation of the provisions of this act, the President, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, may waive such provisions of this act as he deems appropriate.".

RIEGLE AMENDMENT NO. 2722

Mr. RIEGLE submitted an amendment, which was subsequently modified, to the bill S. 1224, supra, as follows:

At the appropriate place in the bill insert the following new section:

SEC. . NEED FOR A NATIONAL ENERGY POLICY PLAN.

The Senate finds that

Recent events in the Mideast precipitated by the Iraqi invasion of Kuwait are a poignant and threatening reminder that the security of our economy and that of the modern industrial world is dependent on a fragile supply of energy, especially Mideastern oil;

Over a decade has passed since the United States enacted comprehensive legislation addressing our energy security;

The United States does not have an up-to-date national energy policy;

The United States needs a comprehensive, not a piecemeal, national energy policy plan meeting the following criteria:

(a) the policy would cover:

(1) all sectors of the economy,

(2) both the short-term and the long-term,

(3) both the demand for, and supply of, energy;

(b) the policy would be formulated by the President and the Congress;

(c) the policy would be based on current data and analysis and on a quantitative projection of our future energy needs and supply,

(d) the policy would include recommendations for development of new technologies to forestall energy shortages and to encourage conservation,

(e) the policy would identify the resources needed to carry out the objectives of the plan,

(f) the policy would recommend legislative and administrative actions necessary to achieve the objectives of the plan.

Current law contained in Title VIII—"Energy Planning" of the Department of Energy Organization Act of 1977 already mandates a specific procedure for creation of a National Energy Policy Plan that contains such criteria,

The President has called for creation of a National Energy Strategy that the Department of Energy has nearly completed;

Therefore, it is the sense of the Senate that in accordance with such law, the President should submit, no later than May 1, 1991, and the Congress should review and revise as necessary, a National Energy Policy Plan, including appropriate legislation to implement such plan."

RIEGLE AMENDMENT NOS. 2723 THROUGH 2749

(Ordered to lie on the table.)

Mr. RIEGLE submitted 27 amendments intended to be proposed by him to the bill S. 1224, supra, as follows:

AMENDMENT NO. 2723

On page 34, after line 22, add the following:

REPORT

SEC. 16. (a) There is established the Fuel Economy Standards Task Force (referred to in this section as the "Task Force"), consisting of the Secretary of Transportation, Secretary of Energy, Administrator of the Environmental Protection Agency, and such other Federal officers as the President may designate.

(b) The Secretary of Transportation shall be Chairperson of the Task Force.

(c) It is the function of the Task Force to prepare and submit to the Congress a Fuel Economy Standards Report. Such report shall include—

(1) an analysis of the Technological feasibility and economic consequences of achieving higher levels of fuel economy;

(2) the effects of revisions to current emission control standards resulting from the amendments made by this Act;

(3) the effect of revisions to current safety standards resulting from amendments made by this Act;

(4) an evaluation of various forms of fuels economy standards and alternative market oriented mechanisms.

(5) an evaluation of the amount of worker dislocation that would result from amendments made by this Act.

(d) Such report shall be submitted to the Congress prior to the expiration of the 6-month period following the date of enactment of this Act.

(e) Notwithstanding any other provision of this Act, or any amendment made by this Act, no CAFE requirements shall be established, revised, or otherwise modified pursuant to this Act, or any amendment made by this Act, prior to the expiration of the 60-day period following the date on which such report is submitted to the Congress.

(f) upon the submission of such report to the Congress, the Task Force shall cease to exist.

AMENDMENT NO. 2724

On page 27, line 11, strike out the quotation marks and the last period.

On page 27, between lines 11 and 12, insert the following:

"(c) The Secretary shall determine whether compliance with any Federal or State regulations or requirement (or any combination thereof) has the effect of reducing the fuel economy of any automobile. The Secretary shall make such determinations for the model year beginning after the enactment of this section and for each subsequent model year. Notwithstanding any other pro-

vision of this Act, if the Secretary determines that compliance with such regulations or requirements will reduce automobile fuel economy, he shall quantify the amount of the reduction and adjust the average fuel economy standards established under sections 502, 514 and 515 by an amount that fully reflects such reduction. All determinations and adjustments required under this subparagraph shall be made no later than the beginning of the model year or years in which such regulations or requirements are applicable.".

AMENDMENT NO. 2725

On page 32, line 21, strike out "SMALL".
On page 33, line 6, strike out "(A)".
On page 33, line 6, strike out "small".
On page 33, line 14, strike out "small".
On page 33, line 18, strike out "small".
On page 33, line 23, strike out "small".
On page 34, line 4, strike out "small".
On page 34, line 6, immediately after the period, add quotation marks and period.
On page 34, beginning with line 7, strike out all through line 10.

AMENDMENT NO. 2726

On page 25, beginning with line 2, strike out all through the period on line 5 and insert in lieu thereof the following:

"SEC. 516. (a) The Secretary may modify any average fuel economy standard established under this Act for model years 1995 and thereafter in accordance with this section.".

On page 26, line 1, beginning with the comma, strike out all through "1988" on line 5.

On page 27, beginning with line 8, strike out all through line 9 and insert in lieu thereof the following: "carbon dioxide emissions, the economic impact of such reduction, and the availability and cost of reduction in carbon dioxide emissions from other sources; and".

On page 27, between lines 22 and 23, insert the following:

(c) Section 502(a)(4) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)(4)) is amended by deleting "any subsequent model year" and inserting in lieu thereof "any subsequent model year up to and including 1994".

(d) Section 502(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(e)) is amended—

(1) by deleting "and" after the comma in clause (3);

(2) by deleting the period at the end of clause (4) and inserting in lieu thereof a comma and the word "and"; and

(3) by inserting immediately after clause (4) the following new clause:

"(5) any negative effect on automobile safety that may be associated with any proposed level of the average fuel economy standards.".

AMENDMENT NO. 2727

On page 34, after line 22, add the following:

PARKING RESTRICTIONS

SEC. 16. (a) The Administrator of General Services, within 90 days following the date of the enactment of this Act, shall promulgate such regulations as may be necessary to require, beginning with the fiscal year ending September 30, 1991, and each fiscal year thereafter, that parking privileges associated with any Federal building, property or grounds, including any airport or other facility, available to or for the use of a Federal officer or employee by reason of their position as such, be restricted to vehicles of a model type whose fuel economy meets or exceeds the fuel economy levels established as the required average fuel economy for such model year under section 502, 514, or 515 of the Motor Vehicle Information and Cost Savings Act.

(b) The provisions of this section shall not be applicable to any parking available solely to accommodate visitors to any such buildings, property, grounds, airports, or facilities.

AMENDMENT NO. 2728

On page 27, line 11, strike out the quotation marks and the last period.

On page 27, between lines 11 and 12, insert the following:

"SIMILAR ENERGY EFFICIENCY IMPROVEMENTS

"SEC. 517. The requirements of sections 514 and 515 shall not take effect until 3 model years after the Secretary of Energy certifies to the Congress that all other users of fossil fuels have been required to make improvements in energy efficiencies of 20% by 1995 and 40% by 2001. These improvements in fuel efficiency shall apply to all users of fossil fuels, including, but not limited to, consumer products, electric utility power plants, industrial boilers, residential heating systems, railroads, ships, and aircraft.".

AMENDMENT NO. 2729

On page 22, immediately preceding line 6, insert the following:

(b) Section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)(2)) is amended by striking all after the first sentence and inserting the following: "Each review shall include a comprehensive analysis of the program required by this part. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standards for model years 1995 and 2001 (as determined under sections 514 and 515), and shall include a comprehensive assessment of the technical and economic feasibility of the standards and the impact of the standards on energy conservation. Among the issues the Secretary shall address in the review are the extent to which the standards would restrict consumer choice; effect consumer transportation costs; alter fleet turnover rates and the retention of older, less fuel efficient vehicles; impact the rates of car pooling or use of public transportation; effect the total number of vehicle miles traveled; and any loss of vehicle sales and any resulting loss of jobs.".

On page 22, line 6, strike out "(b)" and insert in lieu thereof "(c)".

AMENDMENT NO. 2730

At the end of the committee amendment, insert the following:

"SEC. .

"(a) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by this Act are likely to be achieved without an adverse effect on motor vehicle safety or compliance with Federal and State clean air act standards. The report shall pay particular attention to the questions of (1) whether fatalities related to motor vehicle accidents are likely to increase as a result of increased fuel economy standards, (2) whether each manufacturer's compliance with each applicable motor vehicle safety standard or proposed standard would be adversely affected as a result of increased fuel economy standards, and (3) whether each manufacturer's compliance with each applicable clean air act standard, proposed standard, or standard likely to be required by amendments to the Clean Air Act would be adversely affected as a result of increased fuel economy standards.

"(b) The study shall separately address the feasibility of increased fuel economy standards in relation to each of the following safety standards, proposed standards, or standards-related decisions: [Safety standards, proposed standards and related materials inserted here]

"(c) The study shall separately address the feasibility of increased fuel economy standards in relation to each of the following emissions or other clean air standards, proposed standards, or standards likely to be required by the following provisions of the Clean Air Act Amendments: [Emissions standards, proposed standards and related materials inserted here]

"(d) In the event that the Secretary's report does not contain findings that the fuel economy standards prescribed by this Act can be achieved without an adverse effect on motor vehicle safety, or if the Secretary's report concludes that the increased fuel economy standards are not feasible in light of applicable safety and emission standards, proposed standards, likely standards and the associated regulations and/or other requirements, the Secretary shall not have the authority to establish standards pursuant to sections 514 and 515 of this Act, and the amendments made by section 3(a) of this Act shall not take effect."

EXPLANATION: This amendment would ensure that consideration is given to the effect of higher CAFE standards on motor vehicle safety, compliance with applicable safety standards (including proposed standards), and compliance with applicable emission standards (including proposed standards, standards contemplated by the Clean Air Act amendments, and related requirements.) Unless the Secretary concludes that higher CAFE standards are feasible in light of safety considerations and regulatory compliance considerations, the higher standards shall not take effect.

AMENDMENT NO. 2731

Section 9(a) title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end of the following new sections:

"PASSENGER AUTOMOBILES

"SEC. 514. *(a)* [Notwithstanding any other provision of this Act], *Except as provided in subsection (b),* the average fuel economy for passenger automobiles manufactured by any manufacturer in model year 1995 and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through 2000	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 27.5 miles per gallon and shall not exceed 40 miles per gallon.
"2001 and thereafter	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; [unless such standard is modified under section 516] except that such standard shall not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

"(b) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by subsection (a) are likely to be achieved without an adverse effect on motor vehicle safety. The report shall pay particular attention to the question of whether fatalities related to motor vehicle accidents are likely to increase as a result of increased fuel economy standards. In the event that the Secretary's report does not contain findings that the fuel economy standards prescribed by subsection (a) can be achieved without an adverse effect on motor vehicle safety, the Secretary shall not have the authority to establish standards pursuant to subsection (a), and the amendments made by Section 3(a) of this Act will not take effect.

AMENDMENT NO. 2732

Section 9(a) title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end the following new sections:

"PASSENGER AUTOMOBILES

SEC. 514. (a) Notwithstanding any other provision of this Act, the average fuel economy for passenger automobiles manufactured by any manufacturer in model year 1995 and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through 2000	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year [1988] *1990*, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year [1988] *1990;* except that such standard shall not be less than 27.5 miles per gallon and shall not exceed forty miles per gallon.
"2001 and thereafter	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year [1988] *1990*, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year [1988] *1990;* unless such standard is modified under section 516 except that such standard shall not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

"AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES

"SEC. 515. Notwithstanding any other provision of this Act, commencing with model year 1995 and each model year thereafter, the average fuel economy for automobiles other than passenger automobiles manufactured by any manufacturer in any such model year shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through 2000	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for light trucks in model year [1988] *1990*, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year [1988] *1990* except that such standard shall not be less than 20 miles per gallon and shall not exceed 30 miles per gallon.
"2001 and thereafter	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer *for light trucks* in model year [1988] *1990* plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year [1988] *1990* unless such standard is modified under section 516 except that such standard shall not be less than 24 miles per gallon and shall not exceed 35 miles per gallon.

"MODIFICATIONS OF STANDARDS

"SEC. 516. (a) [Any time after the beginning of fiscal year 1995,] the Secretary may modify any average fuel economy standard established under this Act [. for model year 2001 and thereafter] in accordance with this section. In response to a petition from any person that is filed at least 12 months in advance of the model year to which it is applicable, the Secretary shall conduct a rulemaking proceeding to determine whether to increase or decrease such standard to the level which the Secretary determines is the maximum feasible average fuel economy for that model year (taking into consideration the factors listed in section 502(e) and the need to reduce carbon dioxide emissions), [except that the Secretary shall not reduce any such standard below a standard equal to a 30 percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.] The Secretary may also conduct such a rulemaking on the Secretary's initiative.

"(b) In determining the maximum feasible average fuel economy during a rulemaking proceeding under this section, the Secretary shall [weigh equally] *consider* each factor listed in section 502(e) and the need to reduce carbon dioxide emissions. In evaluating the economic practicability of the standard, the Secretary shall consider—

"(1) the economic impact of the standard on the manufacturers, *the employees of the manufacturers,* and on the consumers of the vehicles subject to such standard, *as well as the continued levels of employment at the manufacturers;*

"(2) the savings in operating costs throughout the estimated average life of the vehicle compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the vehicles which are likely to result from the imposition of the standard;

"(3) the total projected amount of energy savings likely to result directly from the imposition of the standard and the economic impact of such energy savings;

"(4) any lessening of the utility or the performance of the vehicles likely to result from the imposition of the standard;

"(5) the impact of any lessening of competition or any change in foreign trade that is likely to result from the imposition of the standard;

"(6) the total projected amount of reduction in carbon dioxide emissions and the economic impact of such reduction; and

"(7) other factors the Secretary considers relevant.".

EXPLANATION: This amendment would change the base year against which the fuel economy improvements called for by Sections 514 and 515 would be measured. The amendment also clarifies that modifications to the standard may be made at any time for any model year, and that appropriate considerations may be taken into account by the Secretary during any proceeding to modify the standards.

AMENDMENT No. 2733

(a) On page 24, the text that begins on line 22 is amended to read as follows:

"PASSENGER AUTOMOBILES

"SEC. 514. (a) Notwithstanding any other provision of this Act, the average fuel economy for passenger automobiles manufactured by any manufacturer in model year 1995 and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through [2000] *2005.*	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 27.5 miles per gallon and shall not exceed forty miles per gallon.
"[2001 *2006* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988, unless such standard is modified under section 516, except that such standard shall not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

(b) On page 25, line 4, the term "2001" is amended to read "1995".

EXPLANATION: This amendment would change the effective date of the second tier of CAFE standards for passenger cars increases from 2001 to 2006. Also, the Secretary is given the authority to amend the CAFE standards for any year at any time.

AMENDMENT No. 2734

At the end of the committee amendment, insert the following:

"SEC. .

"(a) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by this Act are likely to be achieved with an adverse effect on domestic employment in the automobile industry, including suppliers. The Secretary shall consult with the Secretary of Labor in preparing this report.

"(b) in the event that the Secretary's report does not contain findings that the fuel economy standards prescribed by this Act can be achieved without an adverse effect on domestic employment in the automobile industry, the Secretary shall not have the authority to establish standards pursuant to Sections 514 and 515 of this Act, and the amendments made by Section 3(a) of this Act shall not take effect."

EXPLANATION: This amendment would require a study of the potential effect on domestic employment in the automobile industry of new CAFE standards. If the study does not find that the higher standards can be achieved without an adverse effect on domestic employment in the auto industry, including suppliers, the higher standards shall not go into effect.

AMENDMENT No. 2735

At the end of the committee amendment, insert the following new section:

"SEC. .

"(a) On or before January 15, 1992, the Secretary of Transportation shall promulgate regulations establishing procedures for determining, in cases in which a manufacturer did not manufacture passenger and/or other automobiles for sale in the United States in model year 1988, the base fuel economy against which the improvements required by section 514 and/or section 515 are to be measured.

"(b) On or before January 15, 1992, the Secretary of Transportation shall promulgate regulations establishing procedures for determining the extent to which the term "manufacturer" includes a predecessor, a successor, or a joint venturer, for purposes of this title. The regulations shall include procedures for determining, in cases involving a predecessor, a successor or a joint venturer, the base fuel economy against which the improvements required by section 514 and/or section 515 are to be measured.

"(c) Proceedings under this section shall be conducted in accordance with section 553 of title 5, United States Code.

"(d) In the event that the regulations required by this section are not issued on or before January 15, 1992, the Secretary shall not have the authority to establish standards pursuant to sections 514 and 515 of this Act, and the amendments made by section 3(a) of this Act shall not take effect."

EXPLANATION: The amendment provides for the treatment of new manufacturers, addressing the possibility that new manufacturers, who have no average fuel economy in 1988, would have a substantially more lenient standard in MY 1995 than long-time manufacturers. Also, the amendment directs DOT to provide for joint ventures and other changes in the market.

AMENDMENT No. 2736

At the end of the committee amendment, insert the following new section:

"SEC. .

"(a) Section 502(1)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)(1) is amended by inserting "or section 514" immediately after "subsection (a) or (c)" at each place such phrase appears.

"(b) Section 502(1)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)(2) is amended by inserting "or section 515" immediately after "subsection (b)".

EXPLANATION: This amendment provides that credits for exceeding applicable fuel economy standards will continue to be available to manufacturers.

AMENDMENT No. 2737

Amendment to section 9 (page 27)

On page 27, beginning on line 12, section 9(b)(1) is amended to read as follows:

"(b)(1) Section 503(a)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(1)) is amended by—

(A) inserting "and section 514" immediately after "and (c)"; and

(B) striking all after the word "dividing" in the first place such word appears, and inserting in lieu thereof the following:

"(A) a sum of terms, each term of which is created by multiplying the fuel economy measured for each model type manufactured by a manufacturer by the number of passenger automobiles of that type manufactured by that manufacturer in a given model year, by

"(B) the total number of passengers automobiles manufactured in such model year by that manufacturer.

EXPLANATION: This amendment would ensure that the formula for calculating average fuel economy applies to the new CAFE standards, and furthermore converts the formula to a simpler, arithmetic average.

AMENDMENT No. 2738

At the end of the committee amendment, insert the following new section:

"SEC. .

Section 504(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2004(a)) is amended by—

"(a) deleting "or" immediately before the number "506" and inserting ", 514, 515 or 516" immediately after the number "506"; "(b) deleting the words "may be" and inserting in lieu thereof the word "is".".

EXPLANATION: This amendment would ensure that judicial review is available for the new CAFE standards and modifications to the new standards in the same manner as judicial review was available for the previous standards. The amendment would also ensure that judicial review is sought only by those who are actually (not hypothetically) aggrieved by the standards.

AMENDMENT No. 2739

(a) On page 23, beginning with line 9, strike all through line 17 and insert in lieu thereof the following:

"SEC. 7. Section 502(i) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(i) is amended by—

(a) inserting ", the Secretary of Commerce, the Secretary of Labor, the National Transportation Safety Board, the Federal Trade Commission and the United States Trade Representative" immediately after "Secretary of Energy" in each place such phrase appears,

(b) inserting "and section 514 and 515" immediately before the period in the first sentence, and

(c) inserting "and other national policy goals" in the second sentence following the word "goals" in the first place such term appears."

"SEC. 8. Section 502(j) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(j) is amended by—

(a) inserting "and section 514 and 515" immediately before "or any modification",

(b) inserting ", the Secretary of Commerce, the Secretary of Labor, the National Transportation Safety Board, the Federal Trade Commission and the United States Trade Representative" immediately after "Secretary of Energy,"

(c) inserting "Board, Commission or Representative" immediately after "Secretary" in the second place such term appears.

EXPLANATION: This amendment would require consultation with the Secretaries of Commerce and Labor, as well as the National Transportation Safety Board, the Federal Trade Commission and the United States Trade Representative and an opportunity for these agencies to comment before the Secretary of Transportation may establish or modify CAFE standards. The law already provides for consultation with the Department of Energy. The purpose of this amendment is to ensure that the record of the proceeding contains sufficient information about all the potential impacts of a proposed standard.

AMENDMENT NO. 2740

At the end of the Committee amendment, insert the following:

"SEC. .

"(a) The Governor of each state shall, after reasonable notice and public hearings, adopt and submit to the Secretary on or before June 30, 1991, a fuel conservation implementation plan for the state. The plan shall impose requirements designed to conserve gasoline and diesel fuel including, but not limited to, parking surcharge regulations, regulations imposing alternative day driving restrictions, regulations governing the management of existing and new parking supplies, preferential bus/carpool lanes on streets and highways, vehicle inspection/maintenance requirements to optimize efficiency and restrictions on suppliers of gasoline and diesel fuel.

"The plan shall provide for and assure the following:

"(i) Year 1995 through 2000: The total amount of diesel fuel and gasoline used within the state shall not exceed 80 percent of the amount utilized in 1988.

"(ii) Year 2001 and thereafter: The total amount of diesel fuel and gasoline used within the state shall not exceed 60 percent of the amount utilized in 1988.

"The total amount of diesel fuel and gasoline used within each state shall be determined based on the amounts subject to federal taxation in 1988 under the Federal Highway Act.

"(b) In the event that any State fails to submit an implementation plan in accordance with subsection (a), the Secretary shall not authorize or apportion Federal-aid Highway Funds to that state other than for mass transit during fiscal years 1992-1996. The Secretary shall review each plan by January 1, 1992 and shall reject any plan that is not reasonably calculated to achieve the reductions in petroleum use in subparagraph (a). If the Secretary rejects a plan, the Secretary shall not authorize or apportion Federal-aid Highway Funds, other than for mass transit, to the State that submitted the plan during the next fiscal year and each subsequent fiscal year through 1996.

"(c) In the event that during 1995 or any subseqent calendar year any state fails to achieve the reductions in petroleum use in subparagraph (a), the Secretary shall not authorize or apportion Federal-aid Highway Funds to that state other than for mass transit during the next fiscal year."

EXPLANATION: This amendment would impose a requirement that States develop fuel conservation plans to achieve a 20% and 40% improvement in use of gasoline and diesel fuel by the years 1995 and 2001, respectively. The plan must include transportation control measures.

AMENDMENT NO. 2741

Section 9 is amended to read as follows:

"Section 9(a) Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end the following new sections:

"PASSENGER AUTOMOBILES

"SEC. 514. (a) Notwithstanding any other provision of this Act, the average fuel economy for passenger automobiles manufactured by any manufacturer in model year 1995 and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through [2000] *2005*..	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 27.5 miles per gallon and shall not exceed 40 miles per gallon.
"[2001] *2006* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988 unless such standard shall not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

"AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES

"SEC. 515. Notwithstanding any other provision of this Act, commencing with model year 1995 and each model year thereafter, the average fuel economy for automobiles other than passenger automobiles manufactured by any manufacturer in any such model year shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through [2000] *2005*.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for light trucks in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988 except such standard shall not be less than 20 miles per gallon and shall not exceed 30 miles per gallon.
"[2001] *2006* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer *for light trucks* in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988 unless such standard is modified under section 516, except that such standard shall not be less than 24 miles per gallon and shall not exceed 35 miles per gallon.

"MODIFICATION OF STANDARDS

"SEC. 516. (a) [Any time after the beginning of fiscal year 1995,] the Secretary may modify any average fuel economy standard established under this Act [. for model year 2001 and thereafter] in accordance with this section. In response to a petition from any person that is filed at least 12 months in advance of the model year to which it is applicable, the Secretary shall conduct a rulemaking proceeding to determine whether to increase or decrease such standard to the level which the Secretary determines is the maximum feasible average fuel economy for that model year (taking into consideration the factors listed in section 502(e) and the need to reduce carbon dioxide emissions). [except that the Secretary shall not reduce any such standard below a standard equal to a 30 percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.] The Secretary may also conduct such a rulemaking on the Secretary's initiative.

"(b) In determining the maximum feasible average fuel economy during a rulemaking proceeding under this section, the Secretary shall [weigh equally] *consider* each factor listed in section 502(e) and the need to reduce carbon dioxide emissions. In evaluating the economic practicability of the standard, the Secretary shall consider—

"(1) the economic impact of the standard on the manufacturers, *the employees of the manufacturers*, and on the consumers of the vehicles subject to such standard, *as well as ther continued levels of employment of the manufacturers;*

"(2) the savings in operating costs throughout the estimated average life of the vehicle compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the vehicles which are likely to result from the imposition of the standard;

"(3) the total projected amount of energy savings likely to result directly from the imposition of the standard and the economic impact of such energy savings;

"(4) any lessening of the utility or the performance of the vehicle likely to result from the imposition of the standard;

"(5) the impact of any lessening of competition or any change in foreign trade that is likely to result from the imposition of the standard;

"(6) the total projected amount of reduction on carbon dioxide emissions and the economic impact of such reduction; and

"(7) other factors the Secretary considers relevant.".

EXPLANATION: This amendment would change the effective date of the second tier of increased CAFE standards from 2001 to 2006 for both passenger cars and light trucks. It also amends the section relating to modifications of the standards to permit the Secretary to amend any of the standards at any time. In amending the standards, the Secretary would be explicity directed to consider the effect of any proposed amendment on employment.

AMENDMENT NO. 2742

(a) On page 22, the text that begins following line 5 is amended to read as follows:

1985 through [1994] *1999.*	27.5
[1995] *2000* and thereafter.	As provided in accordance with Section 514 of this Act

(b) On page 24, the text that begins on line 22 is amended to read as follows:

"PASSENGER AUTOMOBILES

"SEC. 514. (a) Notwithstanding any other provision of this Act, the average fuel economy for passenger automobiles manufactured by any manufacturer in model year [1996] *2000* and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"[1995] 2000 through [2000] *2008.*	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 27.5 miles per gallon and shall not exceed 40 miles per gallon.
"[2001] *2008* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard is modified under section 516, except that such standard not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

(b) On page 25, line 4, the term "2001" is amended to read "2000".

EXPLANATION: This amendment would change the effective dates of both tiers of the CAFE standards increases from 1995 to 2000 and from 2001 to 2008 for passenger cars. Also, the Sercretary is given the authority to amend the CAFE standards for any year at any time.

AMENDMENT NO. 2743

(a) On page 22, the text that begins following line 5 is amended to read as follows:

"1985 through [1994] *1990.*	27.5
[1995] *2000* and thereafter.	As provided in accordance with section 514 of this Act

(b) On page 22, line 14, delete "1995" and insert in lieu thereof "2000."

(c) On page 24, the text that begins on line 22 down through page 25, immediately before line 1 is amended to read as follows:

"PASSENGER AUTOMOBILES

"SEC. 514. (a) Notwithstanding any other provision of this Act, the average fuel economy for passenger automobiles manufactured by any manufacturer in model year [1995] *2000* and each model year thereafter shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"[1995] *2000* through [2000] *2008.*	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passanger automobiles in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 27.5 miles per gallon and shall not exceed 40 miles per gallon.
"[2001] *2008* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for passenger automobiles in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988, unless such standard is modified under section 516, except that such standard shall not be less than 33 miles per gallon and shall not exceed 45 miles per gallon.

"AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES

"SEC. 515. Notwithstanding any other provision of this Act, commencing with model year [1995] *2000* and each model year thereafter, the average fuel economy for automobiles other than passenger automobiles manufactured by any manufacturer in any such model year shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"[1995] *2000* through [2000] *2008.*	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for light trucks in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 20 miles per gallon and shall not exceed 30 miles per gallon.
"[2001] *2008* and thereafter.	For each such manufacturer, the average fuel economy required by the Secretary to be equal to the average fuel economy achieved by that manufacturer *for light trucks* in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988, unless such standard is modified under section 516, except that than 24 miles per gallon and shall not exceed 35 miles per gallon.

(d) On page 25, line 4, the number "2001" is amended to read "2000".

EXPLANATION. This amendment would change the effective dates of both tiers of the CAFE standards increases from 1995 to 2000 and from 2001 to 2008 for passenger cars and for light trucks. Also, the Secretary is given the authority to amend the CAFE standards for any year at any time.

AMENDMENT NO. 2744

(a) On page 22, line 14, delete "1995" and insert in lieu thereof "2000."

(b) On page 24, the text that begins on line 3 is amended to read as follows:

"AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES

"SEC. 515. Nothwithstanding any other provision of this Act, commencing with model year [1995] *2000* and each model year thereafter, the average fuel economy for automobiles other than passenger automobiles manufactured by any manufacturer in any such model year shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"[1995] *2000* through [2000] *2008*.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for light trucks in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 20 miles per gallon and shall not exceed 30 miles per gallon.
"[2001] *2008* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer *for light trucks* in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988, unless such standard is modified under section 516, except that such standard shall not be less than 24 miles per gallon and shall not exceed 35 miles per gallon.

(c) On page 25, line 4, the number "2001" is amended to read "2000".

EXPLANATION. This amendment would change the effective date for both tiers of light truck CAFE standard increases from 1995 to 2000 and from 2001 to 2008. Also, it would amend the provision regarding modifications of standards to permit the Secretary to amend standards for any year.

AMENDMENT NO. 2745

At the end of the committee amendment, insert the following new section:

"SEC. .

"No action of the Secretary taken pursuant to this title shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) (42 U.S.C.A. § 4321 et seq.).".

EXPLANATION. To ensure that the Secretary can meet the deadlines required by this Title and to avoid redundant analyses, this amendment would provide that no action of the Secretary taken with respect to fuel economy standards shall be deemed to require the preparation of an environmental impact statement.

AMENDMENT NO. 2746

(a) On page 24, the text that begins on line 3 is amended to read as follows:

"AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES

"SEC. 515. Notwithstanding any other provision of this Act, commencing with model year 1995 and each model year thereafter, the average fuel economy for automobiles other than passenger automobiles manufactured by any manufactuer in any such model year shall not be less than the number of miles per gallon established for such model year pursuant to the following:

"Model year:	
"1995 through [2000] *2005*.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer for light trucks in model year 1988, plus an amount equal to 20 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; except that such standard shall not be less than 20 miles per gallon and shall not exceed 30 miles per gallon.
"[2001] *2006* and thereafter.	For each such manufacturer, the average fuel economy required shall be an amount determined by the Secretary to be equal to the average fuel economy achieved by that manufacturer *for light trucks* in model year 1988, plus an amount equal to 40 percent (as measured in miles per gallon) of such average fuel economy achieved for model year 1988; unless such standard is modified under section 516, except that such standard shall not be less than 24 miles per gallon and shall not exceed 35 miles per gallon.

(b) On page 25, line 4, the number "2001" is amended to read "1995".

EXPLANATION: This amendment would change the effective date for the second tier of light truck standards from 2001 to 2006. Also, it would amend the provision regarding modifications of standards to permit the Secretary to amend standards for any year.

AMENDMENT NO. 2747

At the end of the committee amendment, insert the following:

"SEC. .

"(a) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by this Act are likely to be achieved without an adverse effect on motor vehicle safety. The report shall pay particular attention to the question of whether fatalities related to motor vehicle accidents are likely to increase as a result of increased fuel economy standards.

"(b) In the event that the Secretary's report does not contain findings that the fuel economy standards prescribed by this Act can be achieved without an adverse effect on motor vehicle safety, the Secretary shall not have the authority to establish standards pursuant to sections 514 and 515 of this Act, and the amendments made by section 3(a) of this Act shall not take effect."

EXPLANATION: This amendment would ensure that higher CAFE standards will not have an adverse effect on motor vehicle safety, by ordering a comprehensive study of the safety issue and by suspending the higher standards if they cannot be achieved without an adverse effect on safety.

AMENDMENT NO. 2748

At the end of the committee amendment, insert the following:

"SEC. .

"(a) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by this Act are likely to be achieved without an adverse effect on motor vehicle safety or compliance with federal and state clean air act standards. The report shall pay particular attention to the questions of (1) whether fatalities related to motor vehicle accidents are likely to increase as a result of increased fuel economy standards, (2) whether each manufacturer's compliance with each applicable motor vehicle safety standard or proposed standard would be adversely affected as a result of increased fuel economy standards, and (3) whether each manufacturer's compliance with each applicable clean air act standard, proposed standard, or standard likely to be required by amendments to the Clean Air Act would be adversely affected as a result of increased fuel economy standards.

"(b) The study shall separately address the feasibility of increased fuel economy standards in relation to each of the following safety standards, proposed standards, or standards-related decisions: [Safety standards, proposed standards and related materials inserted here]

"(c) The study shall separately address the feasibility of increased fuel economy standards in relation to each of the following emissions or other clean air standards, proposed standards, or standards likely to be required by the following provisions of the Clean Air Act Amendments: [Emissions standards, proposed standards and related materials inserted here]

"(d) In the event that the Secretary's report does not contain findings that the

fuel economy standards prescribed by this Act can be achieved without an adverse effect on motor vehicle safety, or if the Secretary's report concludes that the increased fuel economy standards are not feasible in light of applicable safety and emission standards, proposed standards, likely standards and the associated regulations and/or other requirements, the Secretary shall not have the authority to establish standards pursuant to sections 514 and 515 of this Act, and the amendments made by Section 3(a) of this Act shall not take effect.".

EXPLANATION: This amendment would ensure that consideration is given to the effect of higher CAFE standards on motor vehicle safety, compliance with applicable safety standards (including proposed standards), and compliance with applicable emission standards (including proposed standards, standards contemplated by the Clean Air Act amendments, and related requirements.) Unless the Secretary concludes that higher CAFE standards are feasible in light of safety considerations and regulatory compliance considerations, the higher standards shall not take effect.

AMENDMENT No. 2749

At the end of the committee amendment, insert the following:

"SEC. .

"(a) On or before June 30, 1991, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings with respect to whether the fuel economy standards prescribed by this Act are likely to be achieved without an adverse effect on motor vehicle safety. The report shall pay particular attention to the question of whether fatalities related to motor vehicle accidents are likely to increase as a result of increased fuel economy standards.

"(b) In the event that the Secretary's report does not contain findings that the fuel economy standards prescribed by this Act can be achieved without an adverse effect on motor vehicle safety, the Secretary shall not have the authority to establish standards pursuant to sections 514 and 515 of this Act, and the amendments made by section 3(a) of this Act shall not take effect.".

EXPLANATION: This amendment would ensure that higher CAFE standards will not have an adverse effect on motor vehicle safety, by ordering a comprehensive study of the safety issue and by suspending the higher standards if they cannot be achieved without an adverse effect on safety.

MURKOWSKI AMENDMENT NO. 2750

(Ordered to lie on the table.)

Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill S. 1224, supra, as follows:

On page 34, after line 22, add the following:

AIRLINES

SEC. 16. On or before the expiration of the 12-month period following the date of the enactment of this Act, the Secretary of Transportation, by regulation, shall require all domestic commercial airlines to utilize only wide body aircraft with sufficient fuel efficiency for the routes used by such aircraft in transporting passengers in the ten largest route markets, by volume, within the United States.

JEFFORDS AMENDMENTS NOS. 2751 THROUGH 2753

(Ordered to lie on the table.)

Mr. JEFFORDS submitted three amendments intended to be proposed by him to the bill S. 1224, supra, as follows:

AMENDMENT NO. 2751

REPLACEMENT FUELS PROGRAM

(a) FINDINGS.—The Congress finds and declares that—

(1) In order to have a comprehensive program to reduce pollution and reduce our dependence on foreign oil, it is important to coordinate programs relating to the production of automobiles and the production of fuels.

(2) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

(3) the displacement of energy derived from imported oil with alternative fuels will help to achieve energy security and improve air quality;

(4) transportation uses account for more than 60 percent of the oil consumption of the Nation;

(5) the Nation's security, economic, and environmental interests require that the Federal Government should assist cleanburning, nonpetroleum transportation fuels to reach a threshold level of commercial application and consumer acceptability at which they can successfully compete with petroleum based fuels;

(b) DEFINITIONS.—For purposes of this section—

(1) the term "alcohol" means methanol, ethanol, or any other alcohol which is produced from renewable resources or coal and which is suitable for use by itself or in combination with other fuels as a motor fuel;

(2) the term "replacement fuel" means alcohol or other liquid produced from coal, oil, shale, or other substance as may be determined by the Secretary, for the purpose of mixing with gasoline to be used as a motor fuel;

(3) the term "replacement motor fuel" means any fuel described in paragraph (2) mixed with gasoline for use as a motor fuel;

(4) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A);

(5) the term "motor fuel" means any substance suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways;

(6) the term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, including any affiliate of such person, or any importer of gasoline for use as a motor fuel;

(7) the term "Secretary" means the Secretary of Energy;

(8) the term "United States" means each State of the several States and the District of Columbia; and

(9) the term "renewable" means any source of energy which is available in an inexhaustible supply in the foreseeable future.

(c) REPLACEMENT FUEL PROGRAM.—The Secretary shall establish, pursuant to this section, a program to promote the development and use in the United States of replacement fuels produced in the United States. Such program shall be designed to promote the replacement of gasoline to be used as a motor fuel with replacement motor fuel containing the maximum percentage of replacement fuel as is economically and technically feasible for use as a motor fuel.

(d) DEVELOPMENT PLAN AND PRODUCTION GOALS.—Under the program established under subsection (c), the Secretary, in consultation with the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and determine—

(1) the most suitable raw materials, other than petroleum, for the production in the United States of replacement fuels;

(2) the nature of the replacement motor fuel distribution systems; and the various production processes which use feedstock other than petroleum, necessary for the rapid development of a replacement motor fuel industry in the United States, including a proposed timetable for the development of such system and processes;

(3) the technical and economic feasibility of including liquids extracted from oil shale and coal as part of the replacement fuels program; and

(4) the technical and economic feasibility of producing in the United States sufficient replacement fuels, by the calendar year 2002 in order to replace 20 percent or more, by volume, of the projected consumption of gasoline used as a motor fuel in the United States for that year.

The Secretary shall prescribe, by rule, a substitute percentage goal for purposes of paragraph (4) if he determines that 20 percent is inappropriate.

(e) RULE.—The Secretary shall, by rule, establish production goals for the optimal production of replacement fuel in the United States in each of calendar years 1994 and 1995. In establishing such goals, the Secretary shall—

(1) take into account the availability of reliable sources of replacement fuel produced from renewable resources, coal, and substances other than petroleum and natural gas; and

(2) provide that the production goal for replacement fuel for calendar year 1996 and thereafter shall be not less than 10 percent by volume of the projected consumption of gasoline used as a motor fuel in the United States for each year.

(f) RELIABLE REPLACEMENT FUEL INDUSTRY.—In carrying out subsection (d), the Secretary shall—

(1) identify ways to encourage the development of a reliable replacement fuel industry in the United States, and the technical, economic, and institutional barriers to such development, and

(2) include an estimation of the production capacity in the United States of replacement fuel needed to implement the provisions of this section.

(g) REVIEW.—Not later than 180 days after the date of the enactment of this section, the Secretary shall complete his review and determinations under this section and prepare and transmit a report thereon to each House of the Congress.

(h) REPLACEMENT FUEL REQUIREMENTS.—Of the total 25 quantity of gasoline and replacement fuel sold in commerce during any

of the following years by any refiner (including sales to the Federal Government), replacement fuel produced in the United States shall constitute the minimum percentage determined in accordance with the following table:

In the calendar year:	The minimum percentage of that volume which replacement fuel constitutes, shall be—
1994, 1995	Determined by the Secretary under subsection (i) of this section.
1996, 1997, 1998, 1999, 2000, 2001.	10 percent.
2002 and each year thereafter.	The percentage determined feasible under subsection (d)(4).

(i) MINIMUM PERCENTAGE.—Not later than January 1, 1991, the Secretary shall prescribe, by rule, the minimum percentage of United States produced replacement fuel, by volume, required to be contained in the total quantity of gasoline sold each year in commerce in the United States in calendar years 1994 and 1995 by any refiner for use as a motor fuel. Such percentage shall apply to each refiner, and shall be set for each such calendar year at a level which the Secretary determines—

(1) is technically and economically feasible, and

(2) will result in steady progress toward meeting the requirements under this section for calendar year 1996.

(j) REPORT.—Each refiner shall report annually to the Secretary the percentage of United States produced replacement fuel by volume contained on the average in the total quantity of gasoline for use as a motor fuel that refiner sold during the preceding calendar year.

(k) SATISFACTION OF REQUIREMENTS.—The Secretary shall, not later than January 1, 1991, promulgate regulations allowing the exchange of marketable credits between refiners and manufacturers of replacement fuels in order to satisfy the requirements of subsection (h).

(l) APPLICATION.—The Secretary may, on the application of any persons, make adjustments to reduce the minimum percentage requirement as it applies to that person, but only if and to the extent that such adjustments are consistent with the purposes of this section.

(m) ENFORCEMENT BY THE SECRETARY.—Any person who violates any requirement of subsection (h) is subject to a civil penalty of not more than $1 per gallon for each gallon of fuel sold that is not in compliance with subsection (h). Such penalties shall be assessed by the Secretary.

(n) ORDER.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect within 30 days after the date of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judical review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2) or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3) the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or final judgment shall not be subject to review.

(o) PROCEDURES FOR RULEMAKING.—Section 501 of the Department of Energy Organization Act of 1977 shall apply to any rule, regulation, or order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code) prescribed or issued under this Act.

(p) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subsections (d), (e), (f), and (g) not exceed $1,000,000 for the fiscal year ending September 30, 1990.

(q) COORDINATION WITH OTHER ACTS.—This section shall be administered and enforced in coordination with the administration and enforcement of the Energy Security Act.

(2) CHANGES TO PUBLIC LAW 100-494.—

(a) Section 513(g) of 15 USC 2013 is amended by adding at the end of paragraph (1) the following: "The Administrator shall modify the maximum increase set forth in the preceding sentence according to the increased usage of alternative fuels and the manufacture and sale of alternative fueled vehicles to further the purposes of this Act.

(b) IN GENERAL.—Alternative fuels shall be made available by fuel providers as specified by the Administrator in any area in which clean-fuel vehicles or clean-fuel fleet vehicles are available.

(c) Not later than January 1, 1991, the Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency, shall develop criteria for establishing fuel economy levels for vehicles manufactured to operate solely on domestic energy sources not derived from crude oil products. Such criteria shall take into consideration the relative impacts on energy security, global warming and the local environment of the dedicated fuel compared to a gasoline-powered vehicle of a similar model type. In no case shall the fuel economy level for such dedicated-fuel vehicles exceed the fuel economy level of duel energy vehicle of the same model type designed to operate on a maximum of 85% alcohol fuel.

At the appropriate place, insert the following:

The Congress finds and declares that—

(1) In order to have a comprehensive program to reduce pollution and reduce our d!÷endence on foreign oil, it is important to coordinate programs relating to the production of automobiles and the production of fuels.

(2) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

(3) the displacement of energy derived from imported oil with alternative fuels will help to achieve energy security and improve air quality;

(4) transportation uses account for more than 60 percent of the oil consumption of the Nation;

(5) the Nation's security, economic, and environmental interests require that the Federal Government should assist clean-burning, nonpetroleum transportation fuels to reach a threshold level of commercial application and consumer acceptability at which they can successfully compete with petroleum based fuels;

Changes to Public Law 100-404—

(a) Section 513(g) of 15 U.S.C. 2013 is amended by adding at the end of paragraph (1) the following: "The Administrator shall modify the maximum increase set forth in the preceding sentence according to the increased usage of alternative fuels and the manufacture and sale of alternatively fueled vehicles to further the purposes of this Act.

(b) IN GENERAL.—Alternative fuels shall be made available by fuel providers as specified by the Administrator in any area in which clean-fuel vehicles or clean-fuel fleet vehicles are available.

(c) Not later than January 1, 1991, the Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency, shall develop criteria for establishing fuel economy levels for vehicles manufactured to operate solely on domestic energy sources not derived from crude oil products. Such criteria shall take into consideration the relative impacts on energy security, global warming and the local environment of the dedicated fuel compared to a gasoline-powered vehicle of a similar model type. In no case shall the fuel economy level for such dedicated-fuel vehicles exceed the fuel economy level of dual energy vehicle of the same model type designed to operate on a maximum of 85% alcohol fuel.

AMENDMENT NO. 2753

On page 27, line 23, insert the following:

(c)(1)(a) No later than January 1, 1992, the Administrator may modify any average fuel economy standard established under this Act for model year 1995 and thereafter

to reflect the relative benefits achieved under the Replacement Fuel Program established by this Act. Such modification shall ensure that the average fuel economy standard for model years 1995 through 2000 shall reflect a minimum increase of 15 percent over the 1988 levels, and a minimum increase of 30 percent over the 1988 levels for model year 2001 and thereafter.

(b) DEFINTIONS.—For purposes of this section—

(1) the term "alcohol" means methanol, ethanol, or any other alcohol which is produced from renewable resources or coal and which is suitable for use by itself or in combination with other fuels as a motor fuel;

(2) the term "replacement fuel" means alcohol or other liquid produced from coal, oil, shale, or other substance as may be determined by the Secretary, for the purpose of mixing with gasoline to be used as a motor fuel;

(3) the term "replacement motor fuel" means any fuel described in paragraph (2) mixed with gasoline for use as a motor fuel;

(4) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A);

(5) the term "motor fuel" means any substance suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways;

(6) the term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, including any affiliate of such person, or any importer of gasoline for use as a motor fuel;

(7) the term "Secretary" means the Secretary of Energy;

(8) the term "United States" means each State of the several States and the District of Columbia; and

(9) the term "renewable" means any source of energy which is available in an inexhaustible supply in the foreseeable future.

(c) REPLACEMENT FUEL PROGRAM.—The Secretary shall establish, pursuant to this section, a program to promote the development and use in the United States of replacement fuels produced in the United States. Such program shall be designed to promote the replacement of gasoline to be used as a motor fuel with replacement motor fuel containing the maximum percentage of replacement fuel as is economically and technically feasible for use as a motor fuel.

(d) DEVELOPMENT PLAN AND PRODUCTION GOALS.—Under the program established under subsection (c), the Secretary, in consultation with the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and determine—

(1) the most suitable raw materials, other than petroleum, for the production in the United States of replacement fuels;

(2) the nature of the replacement motor fuel distribution systems, and the various processes which use feedstock other than petroleum, necessary for the rapid development of a replacement motor fuel industry in the United States, including a proposed timetable for the development of such systems and processes;

(3) the technical and economic feasibility of including liquids extracted from oil shale and coal as part of the replacement fuels program; and

(4) the technical and economic feasibility of producing in the United States sufficient replacement fuels, by the calendar year 2002 in order to replace 20 percent or more, by volume, of the projected consumption of gasoline used as a motor fuel in the United States for that year.

The Secretary shall prescribe, by rule, a substitute percentage goal for purposes of paragraph (4) if he determines that 20 percent is inappropriate.

(e) RULE.—The Secretary shall, by rule, establish production goals for the optimal production of replacement fuel in the United States in each of calendar years 1994 and 1995. In establishing such goals, the Secretary shall—

(1) take into account the availability of reliable sources of replacement fuel produced from renewable resources, coal, and substances other than petroleum and natural gas; and

(2) provide that the production goal for replacement fuel for calendar year 1996 and thereafter shall be not less than 10 percent by volume to the projected consumption of gasoline used as a motor fuel in the United States for each year.

(f) RELIABLE REPLACEMENT FUEL INDUSTRY.—In carrying out subsection (d), the Secretary shall—

(1) identify ways to encourage the development of a reliable replacement fuel industry in the United States, and the technical, economic, and institutional barriers to such development, and

(2) include an estimation of the production capacity in the United States of replacement fuel needed to implement the provisions of this section.

(g) REVIEW.—Not later than 180 days after the date of the enactment of this section, the Secretary shall complete his review and determinations under this section and prepare and transmit a report thereon to each House of the Congress.

(h) REPLACEMENT FUEL REQUIREMENTS.—Of the total quantity of gasoline and replacement fuel sold in commerce during any of the following years by any refiner (including sales to the Federal Government), replacement fuel produced in the United States shall constitute the minimum percentage determined in accordance with the following table:

In the calendar year:	The minimum percentage of that volume which replacement fuel constitutes, shall be—
1994, 1995, ...	Determined by the Secretary under subsection (i) of this section.
1996, 1997, 1998, 1999, 2000, 2001.	10 percent.
202 and each year thereafter.	The percentage determined feasible under subsection (d)(4).

(i) MINIMUM PERCENTAGE.—Not later than January 1, 1991, the Secretary shall prescribe, by rule, the minimum percentage of United States produced replacement fuel, by volume, required to be contained in the total quantity of gasoline sold each year in commerce in the United States in calendar years 1994 and 1995 by any refiner for use as a motor fuel. Such percentage shall apply to each refiner, and shall be set for each such calendar year at a level which the Secretary determines—

(1) is technically and economically feasible, and

(2) will result in steady progress toward meeting the requirements under this section for calendar year 1996.

(j) REPORT.—Each refiner shall report annually to the Secretary the percentage of United States produced replacement fuel by volume contained on the average in the total quantity of gasoline for use as a motor fuel that refiner sold during the preceding calendar year.

(k) SATISFACTION OF REQUIREMENTS.—The Secretary shall, not later than January 1, 1991, promulgate regulations allowing the exchange of marketable credits between refiners and manufacturers of replacement fuels in order to satisfy the requirements of subsection (h).

(l) APPLICATION.—The Secretary may, on the application of any person, make adjustments to reduce the minimum percentage requirements as it applies to that person, but only if and to the extent that such adjustments are consistent with the purposes of this section.

(m) ENFORCEMENT BY THE SECRETARY.—Any person who violates any requirement of subsection (h) is subject to a civil penalty of not more than $1 per gollon for each gallon of fuel sold that is not in compliance with subsection (h). Such penalties shall be assessed by the Secretary.

(n) ORDER.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect within 30 days after the date of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation had been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has becomes a final and unappealable order under paragraph (2) or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3) the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or final judgment shall not be subject to review.

(o) PROCEDURES FOR RULEMAKING.—Section 501 of the Department of Energy Organization Act of 1977 shall apply to any rule, regulation, or order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code) prescribed or issued under this Act.

(p) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subsections (d), (e), (f), and (g) not to exceed $1,000,000 for the fiscal year ending September 30, 1990.

(q) COORDINATION WITH OTHER ACTS.—This section shall be administered and enforced in coordination with the administration and enforcement of the Energy Security Act.

(2) Changes to Public Law 100-494—

(a) Section 513(g) of 15 USC 2013 is amended by adding at the end of paragraph (1) the following: "The Administrator shall modify the maximum increase set forth in the preceding sentence according to the increased usage of alternative fuels and the manufacture and sale of alternative fueled vehicles to further the purposes of this Act.".

(b) IN GENERAL.—Alternative fuels shall be made available by fuel provisders as specificified by the Administrator in any area in which clean-fuel vehicles or clean-fuel fleet vehicles are available.

(c) Not later than January 1, 1991, the Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency, shall develop criteria for establishing fuel economy levels for vehicles manufactured to operate solely on domestic energy sources not derived from crude oil products. Such criteria shall take into consideration the relative impacts on energy security, global warming and the local environment of the dedicated fuel compared to a gasoline-powered vehicle of a similar model type. In no case shall the fuel economy level for such dedicated-fuel vehicles exceed the fuel economy of level duel energy vehicle of the same model type designed to operate on a maximum of 85% alcohol fuel.

DANFORTH AMENDMENT NO. 2754

Mr. DANFORTH proposed an amendment to the bill S. 1224, supra, as follows:

On page 34, lines 7 through 10, strike all and insert in lieu thereof the following:

"(B) For the purposes of this paragraph, the term 'small passenger automobile' means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon.".

DANFORTH (AND BURNS) AMENDMENT NO. 2755

Mr. DANFORTH (for himself and Mr. BURNS) proposed an amendment to the bill S. 1224, supra, as follows:

At the appropriate place insert the following new section:

MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

SEC. . Subsection (g) of section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) is amended to read as follows:

"(g) AMENDMENT OF AVERAGE FUEL ECONOMY STANDARDS.—In carrying out section 502(a)(4) and (f), the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.".

BRYAN (AND GORTON) AMENDMENT NO. 2756

Mr. BRYAN (for himself and Mr. GORTON) proposed an amendment to the bill S. 1224, supra, as follows:

Designate the existing text as title I, redesignate sections 2 through 15 and any reference thereto as sections 101 through 114, respectively, and add at the end the following new title:

TITLE II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AUTHORIZATION

SHORT TITLE

SEC. 201. This title may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1990".

DEFINITIONS

SEC. 202. As used in this title, the term—

(1) "multipurpose passenger vehicle" and "passenger automobile" shall have the meaning given such terms by the Secretary; and

(2) "Secretary" means the Secretary of Transportation.

Subtitle A—Authorization of Appropriations

GENERAL AUTHORIZATIONS

SEC. 221. (a) Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $65,424,000 for fiscal year 1990, and $68,433,000 for fiscal year 1991.".

(b) Section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $336,000 for fiscal year 1990, and $351,000 for fiscal year 1991.".

(c) Section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $2,384,000 for fiscal year 1990, and $2,493,000 for fiscal year 1991.".

(d) Section 417 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990g) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", $640,000 for fiscal year 1990, and $669,000 for fiscal year 1991.".

(e) Section 211(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by striking "and" the second time it appears; and

(2) by inserting immediately before the period at the end the following: "not to exceed $5,315,000 for fiscal year 1990, and not to exceed $5,559,000 for fiscal year 1991"."

COMMUNITY EDUCATION PROGRAM

SEC. 222. In order to carry out a national program of community education regarding (1) drunk driving prevention and (2) the use and effectiveness of airbag technology, the Secretary may derive an additional amount not to exceed $10,000,000 from unobligated balances of funds made available for highway safety programs under section 408 of title 23, United States Code. Of the funds allocated to such efforts, not less than one-half shall be used for educational efforts related to airbags. Such amounts shall remain available until expended.

Subtitle B—Side Impact Protection and Crashworthiness Data

SIDE IMPACT PROTECTION

SEC. 241. (a) The Secretary shall, not later than twelve months after the date of enactment of this Act, issue a final rule amending Federal Motor Vehicle Safety Standard 214, published as section 571.214 of title 49, Code of Federal Regulations. The rule shall establish performance criteria for improved protection for occupants of passenger automobiles in side impact accidents.

(b) Not later than sixty days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking to extend the applicability of such standard 214 to multipurpose passenger vehicles. The Secretary shall, not later than two years after such date of enactment, issue a final rule on such extension, taking into account the performance criteria established by the final rule issued in accordance with subsection (a).

AUTOMOBILE CRASHWORTHINESS DATA

SEC. 242. (a)(1) The Secretary shall, within thirty days after the date of enactment of this Act, enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating which will enable consumers to compare meaningfully the crashworthiness of different passenger automobile and multipurpose passenger vehicle makes and models.

(2) Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether additional objective, accurate, and relevant information regarding the comparative crashworthiness of different passenger automobile and multipurpose passenger vehicle makes and models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

(A) information on the degree to which different passenger automobile and multipurpose passenger vehicle makes and models will protect occupants across the range of motor vehicle crash types when in use on public roads;

(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection pro-

vided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seatbelts, fuel system integrity, and other relevant aspects;

(C) ratings which are accurate, simple in form, readily understandable, and of benefit to consumers in making informed decisions in the purchase of automobiles;

(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger automobile or multipurpose passenger vehicle make or model or very soon after such time of introduction; and

(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

(3) Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than nineteen months after the date of enactment of this Act on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

(4) Within sixty days after transmittal of the report of the National Academy of Sciences to the Secretary and the Congress under paragraph (3) of this subsection, the Secretary shall initiate a period (not longer than ninety days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulagted under title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger automobiles and multipurpose passenger vehicles.

(5) Not later than one hundred and eighty days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine, on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger automobiles and multipurpose passenger vehicles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination, and shall transmit such determination to the Congress.

(b)(1) If the Secretary determines that the system described in subsection (a)(5) of this section can be established, the Secretary shall, subject to the exception provided in paragraph (2) of this subsection, not later than three years after the date of enactment of this Act, promulgate a final rule under section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger automobiles and multipurpose passenger vehicles. The rule promulgated under such section 201 shall be practicable and shall provide to the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger automobiles and multipurpose passenger vehicles so as to contribute meaningfully to informed purchase decisions.

(2) The Secretary shall not promulgate such rule unless (A) a period of sixty calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives a summary of the comments received during the period for public comment specified in subsection (a)(4) of this section, or (B) each such committee before the expiration of such sixty-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.

(c) If the Secretary promulgates a rule under subsection (b) of this section, not later than six months after such promulgation, the Secretary shall be rule establish procedures requiring passenger automobile and multipurpose passenger vehicle dealers to make available to prospective passenger automobile and multipurpose passenger vehicle purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of a passenger automobiles and multipurpose passenger vehicles.

Subtitle C—Miscellaneous Provisions

STANDARDS COMPLIANCE

SEC. 261. Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end the following new subsection:

"(j)(1) The Secretary shall establish a schedule for use in ensuring compliance with each Federal motor vehicles safety standard established under this Act which the Secretary determines is capable of being tested. Such schedule shall ensure that each such standard is the subject of testing and evaluation on a regular, rotating basis.

"(2) The Secretary shall, not later than six months after the date of enactment of this subsection, conduct a review of the method for the collection of data regarding accidents related to Federal motor vehicles safety standards established of collecting data in addition to that information collected as of the date of enactment of this subsection, and shall estimate the costs involved in the collection of such additional data, as well as the benefits to safety likely to be derived from such collection. If the Secretary determines that such benefits outweight the costs of such collection, the Secretary shall collect such additional data and utilize it in determining which motor vehicles should be subject of testing for compliance with Federal motor vehicles safety standards established under this Act.".

INVESTIGATION AND PENALTY PROCEDURES

SEC. 262. (a) Section 112(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(a)(1)) is amended by adding at the end the following: "The Secretary shall establish written guidelines and procedures for conducting any inspection or investigation regarding noncompliance with this title or any rules, regulations, or orders issued under this title. Such guidelines and procedures shall indicate timetables for processing of such inspections and investigations to ensure that such processing occurs in an expeditious and thorough manner. In addition, the Secretary shall develop criteria and procedures for use in determining when the results of such an investigation should be considered by the Secretary to be the subject of a civil penalty under section 109 of this title. Nothing in this paragraph shall be construed to limit the ability of the Secretary to exceed any time limitation specified in such timetables where the Secretary determines that additional time is necessary for the processing of any such inspection or investigation.".

(b) Section 109(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398(a)) is amended by adding at the end thereof the following: "The Secretary shall establish procedures for determining the manner in which, and the time within which, a determination should be made regarding whether a civil penalty should be imposed under this section. Nothing in this subsection shall be construed to limit the ability of the Secretary to exceed any time limitation specified for making any such determination where the Secretary determines that additional time is necessary for making a determination regarding whether a civil penalty should be imposed under this section.".

TRAFFIC SAFETY FOR HANDICAPPED INDIVIDUALS

SEC. 263. (a) The Congress finds that—

(1) a number of States fail to recognize the symbols of other States for the identification of motor vehicles transporting individuals with handicaps that limit or impair the ability to walk; and

(2) the failure to recognize such symbols increases the likelihood that such individuals will be involved in traffic accident incidents resulting in injury or death, posing a threat to the safety of such individuals as well as the safety of the operators of motor vehicles and others.

(b)(1) After the date that is eighteen months following the date of enactment of this Act, the Secretary shall require that each State provide for the implementation of a uniform system for handicapped parking designed to enhance the safety of handicapped and nonhandicapped individuals. If a State fails to meet such requirement, the funds that would otherwise be apportioned to the State under section 402 of title 23, United States Code, shall be reduced by 2 percent, until such time as the Secretary determines that the requirement is being met.

(2) For purposes of this subsection, a uniform system for handicapped parking designed to enhance the safety of handicapped and nonhandicapped individuals is a system which—

(A) adopts the International Symbol of Access (as adopted by Rehabilitation International in 1969 at its 11th world Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk;

(B) provides for the issuance of license plates displaying the International Symbol of Access for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(C) provides for the issuance of removable windshield placards (displaying the International Symbol of Access) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(D) provides that fees charged for the licensing or registration of a vehicle used to

transport such individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State; and

(E) for purposes of easy access parking, recognizes licenses and placards displaying the International Symbol of Access which have been issued by other states and countries.

(c) Beginning not later than twenty-four months after the date of enactment of this Act, the Secretary shall annually evaluate compliance by the States with the requirement established by the Secretary under subsection (b). The Secretary shall submit to Congress an annual report regarding such evaluation.

MULTIPURPOSE PASSENGER VEHICLE SAFETY

SEC. 264. (a) The Congress finds that—

(1) multipurpose passenger vehicles have become increasingly popular during this decade and aree being used increasingly for the transportation of passengers, not property; and

(2) the safety of passengers in multipurpose passenger vehicles has been compromised by the failure to apply to them the Federal motor vehicle safety standards applicable to passenger automobiles.

(b) In addition to the rulemaking requirements applicable to multipurpose passenger vehicles under other provisions of this title, the Secretary shall initiate (not later than sixty days after the date of enactment of this Act) and complete (not later than twelve months after such date of enactment) a rulemaking to revise, where appropriate, in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms—

(1) Federal Motor Vehicle Safety Standard 216, published as section 571.216 of title 49, Code of Federal Regulations, to provide minimum roof crush resistance standards for multipurpose passenger vehicles;

(2) Federal Motor Vehicle Safety Standard 108, published as section 571.108 of title 49, Code of Federal Regulations, to provide for a single, high-mounted stoplamp on multipurpose passenger vehicles; and

(3) Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations, to extend the requirements of outboard front seat passive restraint occupant protection systems to multipurpose passenger vehicles.

(c) In accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Secretary shall, not later than twelve months after the date of enactment of this Act, complete a rulemaking—

(1) to review the system of classification of vehicles with a gross vehicle weight under ten thousand pounds to determine if such vehicles should be reclassified;

(2) to revise Federal Motor Vehicle Safety Standard 202, published as section 571.202 of title 49, Code of Federal Regulations, to provide for head restraints for multipurpose passenger vehicles; and

(3) to consider establishment of a Federal Motor Vehicle Safety Standard to protect against unreasonable risk of rollover of multipurpose passenger vehicles.

Any reclassification pursuant to paragraph (1) shall, to the maximum extent practicable, classify as a passenger automobile every motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor car or other motor vehicle principally designed for the transport of persons under heading 8703 of the Harmonized Tariff Schedule of the United States. Nothing in this section shall prevent the Secretary from classifying as a passenger automobile any motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor vehicle for the transport of goods under heading 8704 of such Harmonized Tariff Schedule.

REAR SEATBELTS

SEC. 265. (a) In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall complete, within twelve months after the date of enactment of this Act, a rulemaking to amend Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations, to provide that the outboard rear seat passengers of all passenger automobiles, except convertibles, manufactured on or after September 1, 1989, shall have lap and shoulder seatbelt protection, and that the outboard rear seat passengers of all multipupose passenger vehicles and all convertible passenger automobiles manufactured on or after September 1, 1991, shall have lap and shoulder seatbelt protection.

(b) Notwithstanding any other provision of law, not less than 10 percent of the funds authorized to be appropriated under section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) in fiscal years 1990 and 1991 shall be utilized to disseminate information to consumers regarding the manner in which passenger automobiles may be retrofitted with lap and shoulder rear seatbelts.

CERTIFICATION OF BUMPERS

SEC. 266. The motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by inserting after section 102 the following new subsection:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A. (a) The Secretary shall promulgate, in accordance with the provisions of this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than one hundred and eighty days after the date such regulation is promulgated, as provided in subsection (c)(2) of this section.

"(b)(1) The regulation required to be promulgated in subsection (a) of this section shall provide that, before any passenger motor vehicle is offered for sale, the manufacturer shall affix a label to such vehicle, in a format prescribed in such regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria.

"(2) For purposes of this subsection, the term 'applicable damage criteria' means the damage critieria applicable under section 581.5(c) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this section).

"(c)(1) Not later than ninety days after the date of enactment of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than one hundred and eighty days after such date of enactment, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) of this section by permitting such manufacturer to make the bumper system impact speed disclosure required in subsection (b) of this section on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation promulgated under subsection (a) of this section shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving such information, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

CHILD BOOSTER SEATS

SEC. 267. (a) In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall conduct a rulemaking to amend Federal Motor Vehicle Safety Standard 213, published as section 571.213 of title 49, Code of Federal Regulations, to increase the safety of child booster seats used in passenger automobiles. The rulemaking shall be initiated not later than thirty days after the date of enactment of this Act and completed not later than twelve months after such date of enactment.

(b) As used in this section, the term "child booster seat" has the meaning given the term "booster seat" in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

AIRBAG REQUIREMENT FOR FEDERAL PASSENGER VEHICLES

SEC. 268. The Secretary, in cooperation with the Administrator of General Services and the heads of other appropriate Federal agencies, shall establish a program requiring that all passenger automobiles acquired after September 30, 1990, for use by the Federal Government be equipped, to the maximum extent practicable, with driver-side airbags and that all passenger automobiles acquired after September 30, 1993, for use by the Federal Government be equipped, to the maximum extent practicable, with airbags for both the driver and front seat outboard seating positions.

STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

SEC. 269. Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended by adding at the end the following new section:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Secretary shall, within thirty days after the date of enactment of this section, enter into appropriate arrange-

ments with the National Academy of Sciences to conduct a study of the effectiveness of State motor vehicle safety inspection programs in—

"(1) reducing motor vehicle accidents that result in injuries and deaths; and

"(2) limiting the number of defective or unsafe motor vehicles on the highways.

"(b)(1) The study shall include an evaluation of the implementation, inspection criteria, personnel, budgeting, and enforcement of all types of State motor vehicle inspection programs or periodic motor vehicle inspection programs, including inspections of motor vehicle brakes, glass, steering suspension, and tires.

"(2) If warranted by the study, the National Academy of Sciences shall develop and submit to the Congress recommendations for an effective and efficient State motor vehicle safety inspection program.

"(c) The study shall also consider the feasibility of use by States of private organizations to conduct motor vehicle safety inspection programs and of combining safety and emission inspection programs.

"(d) Appropriate public and private agencies and organizations, including the Secretary, the Administrator of the Environmental Protection Agency, affected industries and consumer organizations, State and local officials, and the motor vehicle insurance industry should be consulted in conducting the study required under this section.

"(e) The study required by subsection (a) shall be completed and transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives within nineteen months after the date of enactment of this section.".

RECALL OF CERTAIN MOTOR VEHICLES

SEC. 270. (a) Section 153 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413) is amended by adding at the end the following new subsections:

"(d) If the Secretary determines that a notification sent by a manufacturer pursuant to subsection (c) of this section has not resulted in an adequate number of vehicles or items or equipment being returned for remedy, the Secretary such manner as the Secretary may by regulation prescribe.

"(e)(1) Any lessor who receives a notification required by section 151 or 152 pertaining to any leased motor vehicle shall send a copy of such notice to the lessee in such manner as the Secretary may by regulation prescribe.

"(2) For purposes of this subsection, the term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelves months preceding the date of the notification.".

(b) Section 154 of the National Traffic and Motor Vehicles Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, such dealer may sell or lease such motor vehicle or item of replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease; or.

"(2) in the case of notification required by an order udner section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicles or item of equipment.".

STUDY OF DARKENED WINDOWS

SEC. 271. The Administrator of the National Highway Traffic Safety Administration shall conduct a study of the use of darkened windshields and window glass in passenger automobiles. In particular, the study shall consider the effects of such use on the safe operation of passenger automobiles, as well as on the hazards from such use to the safety of law enforcement personnel. In conducting such study, the Administrator shall consult with appropriate industry representatives, officials of law enforcement departments and agencies, and consumer representatives. The Administrator shall submit the results of such study to the Committees on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than six months after the date of enactment of this Act.

PETITIONS REGARDING CORPORATE AVERAGE FUEL ECONOMY STANDARDS

SEC. 272. Section 502(d)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(d)(1)) is amended by striking "1980. Such application" and inserting in lieu thereof the following: "1980, or for any model year after model year 1991. Any application seeking such modification".

JUDICIAL REVIEW OF ACTIONS ON CERTAIN PETITIONS

SEC. 273. Section 124(d) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1410a(d)) is amended by adding at the end the following: "The denial of such petition is final agency action subject to judicial review as provided in section 706 of title 5, United States Code.".

BUMPER STANDARD

SEC. 274. (a) Not later than one year after the date of enactment of this Act, the Secretary shall amend the bumper standard published as part 581 of title 49, Code of Federal Regulations, to ensure that such standard is identical to the bumper standard under such part 581 which was in effect on January 1, 1982. The amended standard shall apply to all passenger automobiles manufactured after September 1, 1990.

(b) Nothing in this section shall be construed to prohibit the Secretary from requiring under such part 581 that passenger automobile bumpers be capable of resisting impact speeds higher than those specified in the bumper standard in effect under such part 581 on January 1, 1982.

GRANT PROGRAM CONCERNING USE OF SEATBELTS AND CHILD RESTRAINT SYSTEMS

SEC. 275. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 411. Seatbelt and child restraint programs

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement seatbelt and child restraint programs which include measures described in this section to foster the increased use of seatbelts and the correct use of child restraint systems. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for seatbelt and child restraint programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payble for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the seatbelt and child restraint program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Subject to subsection (c), the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall equal 20 percent of the amount approprtioned to such State for fiscal year 1990 under section 402.

"(e) A State is eligible for a grant under this section if such State—

"(1) has in force and effect a law requiring all front seat occupants of a passenger automobile to use seatbelts;

"(2) has achieved—

"(A) in the year immediately preceding a first-year grant, the lesser of either (i) 70 percent seatbelt use by all front seat occupants of passenger automobiles in the State or (ii) a rate of seatbelt use by all such occupants that is 20 percentage points higher than the rate achieved in 1989;

"(B) in the year immediately preceding a second-year grant, the lesser of either (i) 80 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 35 percentage points higher than the rate achieved in 1989; and

"(C) in the year immediately preceding a third-year grant, the lesser of either (i) 90 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 45 percentage points higher than the rate achieved in 1989; and

"(3) has in force and effect an effective program, as determined by the Secretary, for encouraging the correct use of child restraint systems.

"(f) As used in this section, the term 'child restraint system' has the meaning give such term in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $10,000,000 for the fiscal year 1990, and $20,000,000 for each of the fiscal years 1991 and 1992.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"411. Seatbelt and child restraint programs.".

METHODS OF REDUCING HEAD INJURIES

SEC. 276. The Secretary shall initiate (not later than sixty days after the date of enactment of this Act) and complete (not later than two years after such date of enactment) a rulemaking to revise, in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Federal motor vehicle safety standards. Such rulemaking shall consider methods of reducing head injuries in passenger automobiles and multipurpose passenger vehicles from contact with vehicle interior components, including those in the head impact area as defined in section 571.3(b) of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

PEDESTRIAN SAFETY

SEC. 277. The Secretary shall initiate (not later than six months after the date of enactment of this Act) and complete (not later than two years after such date of enactment) a rulemaking to consider the establishment of a standard to minimize pedestrian death and injury, including injury to the head, thorax, and legs, attributable to vehicle components. Any such standard shall be established in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

NATIONAL VOTER REGISTRATION ACT

HATFIELD (AND FORD) AMENDMENT NO. 2757

(Ordered to lie on the table.)

Mr. HATFIELD (for himself and Mr. FORD) submitted an amendment intended to be proposed by them to the bill (S. 874) to establish national voteer registration for Presidential and congressional elections, and for other purposes; as follows:

On page 9, line 22, strike "1989" and insert "1990".

On page 10, strike lines 20 through 22 insert the following:

(b) NONAPPLICABILITY TO CERTAIN STATES.—This Act does not apply to a State that—

(1) has no voter registration requirement with respect to an election for Federal office; or

(2) permits registration at the polling place at the time of voting in a general election for Federal office.

On page 13, line 4, strike "section 7(3)," and insert "section 7(2), and may develop and use a mail voter registration form that meets all of the criteria stated in section 7(2),".

On page 13, between lines 12 and 13, insert the following:

(c) FIRST-TIME VOTERS.—(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a local jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);

(B) who is provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii); or

(C) who is entitled to vote otherwise than in person under any other law.

On page 14, lines 1 through 6, strike "Offices designated under this subsection shall include public libraries, public schools, offices providing public assistance, unemployment compensation, vocational rehabilitation, and related services, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, and government revenue offices" and insert "The State shall designate the locations that will provide services pursuant to this subsection from locations such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, and government revenue offices and shall include in such designation all offices in the State providing public assistance, unemployment compensation, vocational rehabilitation, and related services".

On page 14, line 12, strike "section 7(3)" and insert "section 7(2)".

On page 16, strike lines 17 through 23 and insert the following:

(3) provide that the name of a voter may not be removed from the offical list of eligible voters other than (A) at the request of the voter, (B) as provided by State law, by reason of criminal conviction or mental incapacity, or (C) as provided under paragraph (4);

On page 16, between lines 23 and 24, insert the following:

(4) make all reasonable efforts to provide that the name of a voter will be removed from the official list of eligible voters by reason of (A) the death of the voter or (B) by reason of a change in the residence of the voter, in accordance with subsection (d);

On page 16, line 24, strike "(4)" and insert "(5)".

On page 17, line 3, strike "(5)" and insert "(6)".

On page 18, lines 10 and 11, strike "next Presidential election" and insert "second general election for Federal office after the date of such notice".

On page 18, line 23, strike "next Presidential election" and insert "second general election after the date of such notice,".

On page 19, between lines 15 and 16, insert the following:

(f) CONVICTION IN FEDERAL COURT.—(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 8 of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(g) REDUCED POSTAL RATES.—(1) Subchapter II of chapter 36 of title 39, United States Code, is amended by adding at the end the following:

"§ 3629. Reduced rates for voter registration purposes

"The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing (including a return mailing to the official using a prepaid envelope supplied by the official) that the official certifies is required by, authorized by, or made in furtherance of the purposes of the National Voter Registration Act of 1990."

(2) Section 2401(c) of title 39, United States Code, is amended by striking "and 3626(a)-(h)" and inserting "3626(a)-(h), and 3629".

(3) Section 3627 of title 39, United States Code, is amended by striking "or 3626 of this title," and inserting ", 3626, or 3629 of this title".

(4) The table of sections for chapter 36 of title 39, United States Code, is amended by inserting after the item relating to section 3628 the following new item:

"3629. Reduced rates for voter registration purposes."

On page 19, strike lines 18 and 19.

On page 19, line 20, strike "(2)" and insert "(1)".

On page 20, line 1, strike "(3)" and insert "(2)".

On page 20, line 21, strike "(4)" and insert "(3)".

On page 21, line 3, strike "(5)" and insert "(4)".

On page 22, line 10, strike "law" and insert "law, and neither the remedies stated in this section nor any other provision of this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)".

On page 24, strike lines 12 and 13 and insert the following:

This Act shall take effect—

(1) with respect to a State that on the date of enactment of this Act has a provision in the constitution of the State that would preclude compliance with this Act unless the State maintained separate Federal and State official lists of eligible voters, on January 1, 1994; and

(2) with respect to any State not described in paragraph (1), on January 1, 1992.

MOTOR VEHICLE FUEL EFFICIENCY ACT

GORTON AMENDMENT NO. 2758

Mr. GORTON proposed an amendment to amendment No. 2715 proposed by Mr. NICKLES to the bill S. 1224, supra, as follows:

Strike "SEC. 510." and all the following matter prior to page 2, line 14, and insert in lieu thereof the following:

"SEC. 510. (a) The Governmentwide average of all passenger automobiles acquired, on and after the expiration of the 120 days following the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1990, for and by the agencies, departments, and other instrumentalities of the executive, legislative, and judicial branches of the United States Government in each fiscal year shall meet or exceed the fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, and for model years 1995 and thereafter, shall meet or exceed the weighted national average fuel efficiency of new vehicles, determined by the Secretary in accordance with this Act, sold in the United States during the preceding fiscal year. Commencing with model year 1995 and each model year thereafter, the Governmentwide average of all light trucks purchased by such agencies, departments, and instrumentalities shall meet or exceed the weighted national average fuel efficiency of new such vehicles.".

On page 2, lines 14 and 17, redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

OLDER WORKERS BENEFIT PROTECTION ACT

METZENBAUM (AND OTHERS) AMENDMENT NO. 2759

Mr. METZENBAUM (for himself, Mr. HATCH, Mr. PRYOR, Mr. HEINZ, and Mr. JEFFORDS) proposed an amendment to the bill (S. 1511) to amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. Finding.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio* v. *Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(1) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) in subsection (f), by striking paragraph (2) and inserting the following new paragraph:

"(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

"(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this Act.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act; or";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(1) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payment that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban con-

sumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

"(A) paid to an individual that the individual voluntarily elects to receive; or

"(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 180 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) That maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or in part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicabe State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following a reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, it—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFITS PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 (as redesignated by section 103(2) of this Act).

(e) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act if the intent of the modification is to evade the purposes of this Act.

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same

job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

"(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

PRESSLER AMENDMENT NO. 2760

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill S. 1224, supra, as follows:

At the end of the bill add the following new section:

SEC. . REDUCTION OF PAY OF MEMBERS OF CONGRESS.

(a) REDUCTION IN PAY.—For each month during fiscal year 1991 in which, by reason of a furlough or other employment action necessitated by a sequestration order under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902), the total amount of the pay paid to any Federal employee is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law, the rate of pay payable to a Member of Congress shall be reduced to the rate of pay established for such Member pursuant to law.

(b) COMPUTATION OF REDUCED PAY.—The rate of pay payable to a Member of Congress for any month referred to in subsection (a) shall be equal to the amount determined by multiplying the rate of pay established for such Member pursuant to law by the percentage reported to Congress for such month under subsection (c)(1)(D).

(c) DETERMINATION OF PERCENTAGE FOR COMPUTATION OF REDUCED PAY.—(1) No later than the first day of each month in fiscal year 1991, the Director of the Office of Management and Budget shall—

(A) determine whether, for a reason described in subsection (a), the total amount of the pay paid to any Federal employee in that month is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law;

(B) estimate the average of the percentages that would result by dividing the monthly equivalent of the annual rate of pay established for each such Federal employee pursuant to law into the total amount projected to be paid such Federal employee for such month;

(C) aggregate the percentages determined under subparagraph (B) for Federal employees for each agency and determine the highest average percentage for any agency; and

(D) transmit to Congress a written report containing the average computed under subparagraph (C).

(2) The Office of Personnel Management may use a statistical sampling method to make the estimates and determinations under paragraph (1).

(3) For purposes of this section, the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code.

(d) APPLICATION TO OTHER FEDERAL LAWS.—For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or any other employee benefit, which requires any deduction or contribution, or which imposed any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section and shall apply to the first applicable pay period of members of Congress occurring on or after October 1, 1990. If the date of enactment of this section is after October 1, 1990, and the provisions of this section become applicable in the reduction of pay of members of Congress, all reductions which would have occurred if this section has been enacted as provided in subsection (b) and the amount of such reduction shall be recovered for the remaining pay periods for fiscal year 1991.

NOTICES OF HEARINGS

COMMITTEE OF CONFERENCE ON S. 1630, THE CLEAN AIR ACT

Mr. BAUCUS. Mr. President, the committee on conference on S. 1630, the Clean Air Act Amendments of 1990, will meet on Tuesday, September 25, at 3 p.m. Location to be announced.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on Tuesday, September 25, 1990, beginning at 10 a.m., in 485 Russell Senate Office Building on H.R. 5063, the Fort McDowell Indian water settlement; S. 3084, the Fallon Paiute-Shoshone Water Rights Settlement Act; S. 2870, the Fort Hall Indian Water Rights Act of 1990; S. 2895, the Seneca Nation Settlement Act of 1990 and S. 381, a bill to provide Federal recognition of the Mowa Band of Choctaw Indians to be followed immediately by an oversight hearing on a proposal to establish Wounded Knee Memorial and Historic site.

Those wishing additional information should contact the Select Committee on Indian Affairs at 225-2251.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings on abuses in Federal student aid programs (part 3): Lenders, guarantee agencies, loan services and the secondary market.

These hearings will take place on Tuesday, September 25, 1990, at 10 a.m., and on Wednesday, September 26, 1990, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building. For further information, please contact Eleanore Hill of the subcommittee staff at 224-3721.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. BRYAN. Mr. President, I ask unanimous consent that the Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Monday, September 24, 1990, to examine the procurement problems involving the use of contractors by the Resolution Trust Corporation to administer the savings and loan bailout.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

WEEK OF THE ILLINOIS HOME CARE PROVIDER

● Mr. DIXON. Mr. President, I would like to take this opportunity to commend the hundreds of thousands of home day care providers in my State and throughout the country. We just recognized their efforts during Illinois' "Week of the Home Day Care Provider," September 9 through September 15, 1990.

I believe most of my colleagues would agree that providing home day

care for our Nation's children is an important job. The home day care providers are a frequently overlooked service group, and I am proud to commend them today.

Illinois has formed the State Home Day Care Association to support, guide, encourage, assist, and promote professionalism among all day care providers.

The association offers invaluable support to providers through assistance with licensing, record keeping, safety, and parent-provider difficulties. The State association promotes public communication and political activism through its work with legislative representatives.

Mr. President, I am proud to honor the Illinois State Home Day Care Association. We must all work together to supervise the care of our children, and to assist their providers in any way possible.

We are fortunate to have organizations such as the Illinois State Home Day Care Association which display care, compassion, and concern for fellow citizens. Such tremendous efforts and aspirations on behalf of our childrens' care providers deserve recognition and encouragement.●

IN HONOR OF LUCY NARVAIZ, A NEW MEXICO "POINT OF LIGHT"

● Mr. DOMENICI. Mr. President, I rise today to recognize Ms. Lucy Narvaiz for her selfless dedication to helping others. On August 10, 1990, President Bush named Ms. Narvaiz as the 218th "Point of Light." I am proud to join the President in bringing her efforts to light, so that her life may serve as a shining example for us all.

I have known and respected Lucy since we met at her graduation from the College of Santa Fe in 1984. I admired her then and pay tribute to her now.

As President Bush has stated, "If you have a hammer, find a nail. If you know how to read, find someone who can't. If you're not in trouble, seek out someone who is." Likewise, Lucy has devoted her life to the betterment of the world around her.

Lucy, 79, began her community service at the early age of 9 when she served as a translator for the people living in the village of Agua Fria. She was the only member of her village who spoke English. She would help her neighbors translate medical instructions, interpret tax forms, and read letters.

Eventually, she became the 4-H club leader, a position she held for over 19 years, teaching children how to grow, harvest, and preserve fruits and vegetables.

For the last 20 years, Ms. Narvaiz has been a volunteer tutor to Hispanics and Native Americans through the local community college, Literacy Volunteers of America, the Community Action Program, and the Senior Citizens Agency.

Lucy comes to the aid of new immigrants to the United States by finding them housing and employment. She also provides financial help to needy individuals until they are able to support themselves. Lucy is currently working to preserve one of New Mexico's great cultures through a book project which traces Hispanic traditions of the Sante Fe region.

Ms. Narvaiz truly is a remarkable woman. I hope that each of us will be inspired through her courageous efforts to become more active participants in our own communities.

Through this Presidential award, New Mexico and the United States salute the dedication of Ms. Lucy Narvaiz. She truly embodies the spirit of what President Bush meant when he referred to community volunteers as "one thousand points of light."●

THE PENINSULA CHILDREN'S CENTER IN PORTLAND, OR

● Mr. PACKWOOD. Mr. President, I would like to call your attention to an outstanding program in my State. The Peninsula Children's Center [PCC] has expanded the concept of a child care center in north Portland to address multiple community needs. The center serves 200 children from the ages of 5 weeks to 11 years, providing both full-day preschool care and before and after school care for 10 area elementary schools.

Low-income and single-parent families are well served by PCC's sliding fee scale. In addition, the center also works with the Portland Public Schools' Teen Parent Program, providing care for the children of teen parents, which in turn allows teen mothers the chance to continue their education secure in the knowledge that their children are receiving quality care.

The before and after school program is currently conducted at several sites. PCC is undertaking the enormous project of purchasing and renovating a new site for its center, which will enable it to house the before and after school program in one central location. Furthermore, the building project will add space for 50 additional children, which will create 5 permanent jobs for low-income persons. When the building project is completed, Peninsula will generate an annual payroll of $400,000, a significant contribution to a local economy mostly of small businesses. PCC enjoys widespread local support, as well as support from numerous charitable organizations throughout the country for the building project.

PCC is located in an area of Portland that has been experiencing problems with drugs, crime, and gangs. There is a large low-income population and a high population of at-risk children. PCC hopes to foster a climate that will enhance revitalization efforts in its community, as well as serve the needs of at-risk children.

PCC has a well-developed plan to achieve the successful completion of its inspiring goals. I bring this program to your attention as a model of creative vision in serving community needs. This program creates an atmosphere of hope for many Portland children.

I commend the efforts of, and thank, the Peninsula Children's Center for its contribution to Oregon and, by its leadership, to other States as well.●

TRIBUTE TO J. THOMAS MONTGOMERY, PACOIMA, CA

● Mr. WILSON. Mr. President, it is with great pleasure that I rise today to commend the exemplary community service that Mr. J. Thomas Montgomery has demonstrated to Pacoima, CA.

In recognition of his extraordinary accomplishments in promoting health care for the medically indigent, Mr. Montgomery was the recipient of the 1990 John Gilbert Award on September 11 from the National Association of Community Health Centers [NACHC]. This national honor is presented annually to the individual who best champions the cause of those who are in need of appropriate and adequate health care.

His contributions over the past 20 years to his country and community are seemingly endless. A decorated World War II veteran, Mr. Montgomery has served on countless boards and committees in Pacoima; yet it is his commitment to health care that is the most laudatory and outstanding. Understanding the growing need for health care for the poor, Tom Montgomery, as he is known to those familiar with health centers, has been a vital spirit in developing the consumer interests which lie at the core of the Health Center Movement. He has successfully represented those interests as the first president of the consumer affiliate of the National Association of Community [nee Neighborhood] Health Centers [NACHC] and as the Association's second (and longest-serving) consumer representative to the executive committee, succeeding Ethel Bond.

After NACHC became a nationally recognized organization, Tom realized that it could serve as a focal point from which consumers could network within the new organization. Tom Montgomery remains at the heart of the health consumers network in his capacity as president of the board of directors of the Northeast Valley Health Corp.

I am proud to salute the tremendous accomplishments Tom Montgomery has made to the city of Pacoima and to congratulate him on receiving the John Gilbert Award from the NACHC. His bold and effective consumer advocacy on behalf of his fellow Californians has deservedly received national acclaim, as he continues to make a profound difference for the better in our society.●

COMPREHENSIVE TREATMENT PROGRAM FOR PREGNANT WOMEN

● Mr. DECONCINI. Mr. President, as a result of grants from the Office of Substance Abuse Prevention, Pima County, AZ, will soon have a watershed, comprehensive treatment program for addicted pregnant women and their infants. This is a cooperative effort by the University Medical Center, AMITY, Inc., CODAC Behavioral Health Services, and La Frontera. The services—never before offered on this scale—will provide a continuum of care for addicted women and their children and will include substance-abuse counseling, prenatal care, parenting skills, relationship skills, health care, AIDS prevention, transportation, and therapeutic child care.

At the press conference announcing the awards, Naya Arbiter, director of services at AMITY, delivered a statement which went to the heart of the problem facing women addicted to drugs and alcohol: The critical shortage of treatment programs available to women. Despite recommendations of researchers over the past two decades, women and children have been the lowest priority in terms of delivered drug treatment services. A 1990 survey conducted by the National Association of State Alcohol and Drug Abuse Directors, Inc., estimates that 280,000 pregnant women in this country need treatment, yet only 1 in 10 receive any help.

We must increase the treatment opportunities for women. As Ms. Arbiter so perceptively points out, "If one woman turns her life around," it impacts "an entire family system and can insure a life worth living for the children yet to be born." Mr. President, I ask that Naya Arbiter's statement be printed in the RECORD in its entirety, and I highly recommend it to my colleagues.

STATEMENT OF NAYA ARBITER

In September of 1962 the White House hosted the first Presidential Conference on Drug Abuse. Twenty-eight years ago, it was noted by Senator Thomas Dodd that as long as people demanded drugs, drugs would be made available. He said, "The higher the risk, the higher the price, the higher the profit". The results of that conference and the testimony given were that treatment programs opened, first on the East Coast and then around the United States. Although the sixties saw the beginning of treatment, these treatment programs were designed for and run by men. In 1974, the National Institute on Drug Abuse established its program for women's concerns. In 1976, Public Law 94-371 was passed granting priority consideration for the funding of women's treatment programs. However, children were still not included. Women continued to be tragically underserved.

A 1980 (NIDA) study showed that 70% of addicted women had been raped or molested prior to their substance abuse. In the early 1980's when a random sample was taken of drug treatment programs in the United States, 80% of them did not address any issues of sexuality. In fact, 40% of the drug-dependent women who had been interviewed reported sexual harassment within the program itself.

Women continued to be tragically underserved. In three decades, most treatment programs and services have been designed for white, high verbal males. The majority of research has bene done on that population. The addiction of profile of the male rather than the female addict. Drug treatment programs were not designed for: the convict or felon who is a women, the children of those women, the woman who is a drug-using prostitute who gets raped on a average of 30 times per year, the woman who has no skills, the pregnant teen-ager or the 14-year old drug-using girl of any race, color or creed. Drug treatment programs have not been designed for the woman who has been used, sold, beaten, photographed naked, violated, conquered, degraded and exploited. The female addict has been considered sicker, more negative and more difficult to deal with. She has frankly been ignored.

This attitude has been repeated not only in the treatment field, but in corrections as well. When innovative approaches are developed for male offenders, they are not typically put into the female institutions. Working in a female prison in most states is considered the end of the career path for corrections personnel. When we talk of the overcrowding of prisons, we think of men. We do not think of the California Institute for Women where 85% of the inmates are drug users. This is the largest prison for women in the free world. Built for 900 women in 1952, it houses 2,600 with no aid, no programs and sometimes as many as 70 live births a month. Women continue to be tragically underserved, and women are still the primary care givers in our society. Our apathy and our indifference has cost us dearly. Today, according to the Department of Justice Drug Use Forecasting statistics, in Phoenix, Arizona, 70% of all women arrested test positive for drugs. In Portland, Oregon, 72% of all women arrested test positive for drugs. In Philadelphia, 90% of all women arrested test positive for drugs.

In the midst of this tragedy are a few research studies that have tracked those women who have accessed treatment. Significantly, the women who do access treatment and stay in treatment do better than their male counterparts (see references). This has been true around the country, and this was true at Amity. For five years, we were able to run a small pilot project including women and their children. Our services were tailored specifically for those women. The most successful group of women were those who were able to participate in treatment with their children. More than 80% of them are clean and functioning today. If one woman turns her life around, it turns an entire family system and can insure a life worth living for the children yet to be born.

In Tucson, Arizona, the lack of services has manifested itself in many ways. In the jail project that Amity runs, in conjunction with the Sheriff's Department, the 90 women that have participated represent 164 children. By positively affecting 90 women's lives, the lives of 254 are touched. Of those 90 women the addiction histories of the mothers are always longer. Why? Because frustrated courts respond to young mothers and without treatment alternatives, these mothers are placed back on the streets over and over again rather than being mandated to treatment where they would be separated from their children. What happens to these children? We know that one of the biggest predictors of substance abuse is the substance abusing parent incarcerated in Arizona. These same children started on an average experimenting with drugs at the age of nine. These are the children of the mothers that we did not reach one generation ago.

In launching our drug war, we have identified the enemy. We have objectified the enemy and given the enemy names and labels. We have rejected the enemy and developed a set of prejudices to justify and continue our fight. Yet we do not have the experience in our culture of fighting a war and welcoming the enemy back into the fold. We are not skilled in separating the bad behavior from the person who has a positive possibility. We have not targeted the primary care givers of our next generation—women. The drug war has resulted in a long waiting list for the wounded. Those on the end of the line are women and children.

The grants discussed here today are a watershed for Arizona. This is the first time that services will be made available on this scale for addicted women and their children. These grants recognize that addicted and pregnant women cannot help themselves without help from others. They recognize that young drug-using mothers will access help for themselves and their families if that help is available. These grants recognize that there is a crying need for such help. Amity will be providing substance-abuse counseling; a drop-in center that will serve as a resource center, teach parenting skills, relationship skills, health care and AIDS prevention and therapeutic day care. We will network with all other community agencies; with an inter-disciplinary approach we can make a significant difference for the woman whose lives we will be able to touch.

I would particularly like to thank Senator Dennis DeConcini for his hard work in making this day possible and also two of his staff, Tim Carlsgaard and Lynn Kimmerly, who have worked many hours for a number of years helping in this effort.

AMITY, INC.

[149 Women who participated in the Amity Therapeutic Community (1981–87)]

Total enrollment	Number of entries	Clean person days	Average length of stay	Prostitution	IVDA	IV and Pros.
Mothers at Amity without children	50	9,844	197	22	24	17
Childless women	86	28,299	329	22	40	20
Mothers at Amity with children	17	8,919	525	8	9	4
Total	153	45,062	295			

Women's services need to be expanded, particularly in view of the AIDS crisis. Following is a snapshot of a portion of Amity's Women's Services recipients in 1989:

35 women, February, 1989 Amity Therapeutic Community,

Of 35 women currently in treatment:	
Intravenous drug abusers	24
Histories of prostitution	15
Average years of prostitution	2.8
Combined total of children	41
Number on probation	15

35 women, February, 1989 Amity Therapeutic Community,—Continued

Amity as first treatment alternative	16
Arrested between 1 and 5 times	9
Arrested between 6 and 10 times	7
Arrested over 11 times	9
No arrests	10

Percent of the IVDA's who consistently reported sharing needles over a two-year period: 100.

Percent of the women who reported practicing safe sex by the ocassional use of a condom: 15.

The estimated sexual partners for these 35 women during a two-year period: 21,000.

Out of 15 prostitutes, all reported acquiring a sexually-transmitted disease at least once during the period of time they prostituted; 14 reported continued sexual activity without appropriate medical treatment.

According to the June, 1988 Center for Disease Control Report the rank of Arizona in the U.S. in newly reported AIDS cases: 17.

DRUG USE BY ALL ARRESTEES [1]

City	Percent (0 20 40 60 80 100)	Range of percent positive: Low	Date	High	Date	Percent positive [1]: 2+Drugs	Cocaine	Marijuana	Amphetamines	Opiates	PCP
Males											
New York	84	76	4/89	90	6/88	41	77	24	0	20	2
San Diego	83	66	6/87	85	1/89	52	42	46	37	23	6
Philadelphia	81	79	8/88	84	4/89	33	73	25	1	8	1
Los Angeles	76	69	10/87	77	4/88	30	57	25	6	14	5
Houston	70	61	1/88	70	7/89	24	58	24	2	3	0
Cleveland	70	66	2/89	70	8/89	17	58	18	0	4	2
Ft. Lauderdale	69	62	8/88	71	3/88	27	52	32	0	3	0
Wash., D.C.	68	68	9/89	72	2/89	24	61	13	0	8	11
Detroit	67	62	4/89	69	10/88	22	57	24	0	6	[2]
New Orleans	65	58	1/88	76	4/89	24	56	23	0	5	2
Dallas	65	57	12/88	72	6/88	29	55	23	4	11	[2]
San Jose	65	[3]	[3]	[3]	[3]	25	35	27	11	7	13
Portland	64	54	1/89	76	8/88	28	37	35	10	15	0
Birmingham	63	63	8/89	75	7/88	21	52	22	[2]	5	[2]
Indianapolis	62	50	2/89	62	9/89	23	29	48	0	5	0
St. Louis	61	56	10/88	69	4/89	24	48	24	[2]	6	7
Phoenix	60	53	10/87	67	1/88	32	36	38	9	14	[2]
Kansas City	59	54	11/88	64	5/89	20	43	24	2	2	5
San Antonio	53	49	6/89	63	8/88	22	28	27	3	15	[2]
Females											
Philadelphia	90	77	1/89	90	7/89	34	75	18	0	17	0
Wash., D.C.	84	70	2/89	88	6/89	35	79	8	0	18	10
Kansas City	83	70	11/88	83	8/89	25	70	20	3	2	1
Los Angeles	80	72	7/88	80	7/89	38	67	14	6	20	7
Portland	79	69	1/89	82	8/88	35	57	24	16	27	0
New York	72	72	7/89	83	2/88	30	61	21	0	18	1
Fort Lauderdale	70	[3]	[3]	[3]	[3]	16	61	12	0	2	0
Phoenix	69	54	7/88	78	3/89	33	48	27	12	16	3
New Orleans	63	46	11/87	65	1/89	24	54	10	0	6	2
Houston	62	62	7/89	64	4/89	29	54	17	1	11	0
St. Louis	59	45	11/88	75	4/89	19	50	12	0	10	1
San Jose	59	[3]	[3]	[3]	[3]	21	30	10	12	8	17
Birmingham	56	56	8/89	77	4/89	19	43	12	0	4	0
San Antonio	55	45	2.89	55	9/89	32	36	16	5	22	0
Dallas	42	42	9/89	71	6/88	11	31	8	3	6	0
Indianapolis	42	42	9/89	47	2/89	10	22	23	0	[2]	0

Source: National Institute of Justice/Drug Use Forecasting Program.
[1] Positive Urinalysis, July through September 1989.
[2] Less than 1 percent.
[3] Datra not available.

Women—The Amity/Pima County Jail Project, 1987–89

The number of these women who are mothers	67
Total number of children represented	164
Average years of addiction for white women without children	7.1
Average years of addiction for white women who are mothers	12.5
Average years of addicition for hispanic women without children	8.7
Average years of addiction for hispanic women who are mothers	14.1
Average years of addiction for black women without children	5.8
Average years of addiction for black women who are mothers	8.2
Number of women who went on to long-term treatment	33
Total number of women rearrested: Of those rearrested that went on to prison	8

There have been 90 women who have participated in the Amity/Pima County Jail Project since its inception in 1987.

Men—The Amity/Pima County Jail Project, 1987–89

Total number of children represented	314
Average years of addiction for white men	12.7
Average years of addiction for hispanic men	10.5
Average years of addiction for black men	13.5
Average years of addiction for native American men	11.8

There have been 259 women who have participated in the Amity/Pima County Jail Project since its inception in 1987.●

CONCERNING THE AGE OF DIGITAL MUSIC

● Mr. D'AMATO. Mr. President, I rise today to address an issue that will profoundly affect one of America's great creative contributions to the entire world. During the 20th century America's musicmaking community—its composers, songwriters, musicians, and vocalists—have given the world the music which helped to define our age, and which binds diverse peoples together. Go anywhere on this planet today, turn on a radio, and chances are you will hear an American song.

Indeed, in an era where America's production and export ability is often in question, our music creating community continues to make and sell beautiful music the whole world loves. Perhaps no single element of American culture so influences the perception of America abroad. Our unrestrained creative energy, our ethnic and racial diversity, and yes, our often intense debate with ourselves, all come through in our music. From the timeless strains of the Russian immigrant Irving Berlin to the straining chords of the American song-poet Bruce Springsteen, American music cries freedom to a world that longs to hear it.

The issue that concerns me, Mr. President and my colleagues, is the

worldwide rush toward digitalization of music recording and transmission that could—if not properly managed—destroy our domestic music industry. That would have a particularly devastating economic effect in my home State of New York, but it would also diminish our entire Nation. Let me say right at the outset that neither I nor any of the people I have talked with in the music industry oppose the new digital age in music. Anyone who has heard a compact disc knows they are a wonderful improvement in sound.

That is not the issue. The problem comes when this pristine source of music is copied in violation of our copyright laws. And Mr. President, make no mistake about it, one of the fundamental reasons for the great success of America as center of creative and inventive genius over the years has been our copyright protections, which the founding fathers had the vision to enshrine in the Constitution. They could not have conceived in their wildest dreams that 200 years later we would be dealing with the potential to make unlimited exact copies of digitally recorded music, but the same principle that nurtured and protected generations of authors, composers, and inventors still applies: The creative product of the mind is a form of intellectual property that deserves just as much protection as our personal and real property. Indeed, in this information age, much of what is invented and created is intellectual property. From computer programs to music recordings, intellectual property is basic to our national economic and social well-being. It is no mere coincidence that one of the first things the newly freed nations of Eastern Europe are trying to establish is a system of protection of intellectual property that communism so ruthlessly denied.

Recently, Mr. President, we have witnessed what many consider to be the first shot in a war for the future of American music in the digital age. Through the marvels of technology—technology, I might add, that is itself protected by American patents—we now have digital audio tape machines, or DAT as its called, that can make an exact replication of a digital recording. The copy is a digital clone, with absolutely no degradation in sound quality. Imagine for a moment, Mr. President, that someone had invented a supermachine that could make an exact replica of, let us say, a compact disc player, without paying for patents or production licensing. Why the hardware manufacturers would be running to the courts and the Congress screaming for relief. And they would be right to holler, because no one should steal another's property or work. But what we face today is a potential for pilfering of intellectual property that is no less severe in its impact on its victims. These new DAT machines make it possible to make unlimited perfect copies of recordings that are protected works under our copyright law.

The people who make the music possible—the composers, songwriters, publishers, and recording manufacturers, would see their intellectual property lifted right before their very eyes and ears. That is just not right. And it is not fair. Maybe that is why at a hearing chaired early this summer by my distinguished friend, Mr. INOUYE, the American music-creating community presented such a convincing case against imposing a questionable technological fix to prevent unauthorized digital taping of prerecorded music. Some of the leading lights of American music made a stirring defense of the right of our musicmakers to be protected in their work from the potential heavy losses to DAT copying. The Senate has wisely heeded their complaint and not unilaterally imposed an unwanted technical solution to the enormous copyright questions raised by DAT.

Now there is new urgency to the plea for relief from digital copying given the dizzying pace of other changes that are literally on the horizon for digital music. Within the past few months several major communications companies have filed petitions with the FCC to begin digital transmission of music from satellites. These are not pie in the sky schemes. This summer the Canadian Broadcasting Co. conducted a pilot test for a national digital satellite music system that could be in place in just a few years. Imagine, compact disc quality music from the sky. And imagine too the potential for receiving and taping digital music directly from satellite to DAT. And just down the road are a new generation of recordable/erasable compact disc machines and even computer driven music systems that will make music copying easier still. Are we to wait until the American music industry is destroyed, or until our local record stores and radio broadcasters are driven from the marketplace, before we act to manage this monumental change?

In the last analysis, Mr. President and my colleagues, this issue—like so many others—comes down to a question of fundamental fairness and the willingness of Congress to take the hard steps to do what is right. There is one simple and straightforward way to deal with digital highjacking of music. That way is not in my estimation to deny the American consumer the benefits of DAT, but to ask him or her to pay a fair share to copy digital music. And let us not stand for those who try to deter us from doing what is right here by intoning the incendiary tax bugaboo. We should not ask consumers to pay one more cent in taxes to the Government to own a DAT machine, or buy a DAT tape.

But it is not unreasonable to ask consumers to pay for the music they use and enjoy. When we buy a book, we do not balk at the royalty paid the author. When we go to a movie, we do not jump the turnstile to get a free look. When we visit a park or go fishing we do not argue with the rangers about paying the price of admission to share in the beauty and bounty of our land and its resources. Why then, when we buy a blank tape for the express purpose of copying a protected work of musical art, should anyone denounce the idea of a portion of the purchase price going to pay a royalty to the people who gave us the music we think enough of to want to copy it in the first place.

Mr. President, many other progressive nations around the globe have recognized the legitimate claim of the creators of music to fair compensation for the use of their prerecorded works for unauthorized copying. Much of Europe already requires the payment of royalties to music creators out of the proceeds from the sale of blank audio cassettes, including analog as well as digital tapes. Now the entire European Economic Community is considering extending this protection communitywide as an element of the impending economic integration of Europe. Our American music creators are not even asking for that much relief. They have practically conceded the considerable losses from analog recording and seek only to obtain protection from the newly introduced digital copying systems. Why then, when our American musicmakers have asked for such reasonable assurance against future losses, should we be so loathe to extend protection that our European counterparts are already providing. Pardon the pun, my colleagues, but that is a heck of a way to harmonize our trade policies as they relate to the music world.

Instead let American get in tune with the worldwide trend toward protecting musicmakers. Let us have the whole world singing from the same sheet of music when it comes to encouraging those who give us the music that lightens and inspires our lives. And finally, to paraphrase the old adage, let us not balk when it is time to pay the piper.●

TRIBUTE TO SMSGT DAVID M. ORANGE, SR.

● Mr. McCONNELL. Mr. President, I would like to take a moment to inform my colleagues of the accomplishments of SMSgt. David M. Orange, Sr., of Louisville, KY. Sergeant Orange has recently been named one of the Air Force's 12 Outstanding Airmen of the Year.

Serving as a combat control supervisor with the 123d Tactical Airlift

Wing, Kentucky National Guard, Sergeant Orange's first exposure to our military was in the U.S. Marine Corps. While in the Guard, he has distinguished himself in the combat control field, and by successfully completing jump masters school.

Mr. President, I ask that a brief narrative of Sergeant Orange's accomplishments appear in the RECORD so that my colleagues may appreciate his commitment and dedication to our country's defense.

The narrative follows:

SMSgt. David M. Orange, Sr., Combat Control Supervisor, combat control team, 123d Tactical Airlift Wing, Kentucky Air NationaL Guard, Lousiville. The ANG is a second military career for Sergeant Orange, who first served in the Marine Corps. In the Corps, he was an E-6 by age twenty-two. In the Guard, Sergeant Orange has become a role model for those in the Combat Control field. This career path is new to the Reserve Forces, and Sergeant Orange has organized a complex schedule of tasks necessary to maintain the Combat Control Team's readiness. He coordinates his team's activities with the Joint Airborne Air Transportability monthly conferences, the National Guard Bueau, and Military Airlift Command.

Sergeant Orange completed the Combat Control training pipeline, which has a washout rate of eighty percent. In addition, he attended Jump Master School even before completing required minimum time on jump status and passed the course.

Sergeant Orange further distinguished himself at Combat Control School by earning two top honors: the Jerome Bennett Award for demonstrating the highest qualities of leadership and professionalism and the Honor Graduate Award for earning the highest academic and performance grades.

DEAR SENATOR MCCONNELL: I am honored to inform you that SMSgt David M. Orange, Sr., from Lousiville, KY, has been named one of the Air Force's 12 Outstanding Airmen of the year. These dozen airmen, presented each September at the AFA's National Convention, represent the best of the force.

Enclosed for your convenience is a brief narrative of the individual's accopmlishments.

LT. COL. JIM TAPP,
Chief, Senate Liaison.●

NOMINATIONS OF DAVID HACKETT SOUTER

● Mr. DECONCINI. Mr. President, I am announcing today my decision on the nomination of David Hackett Souter to be an Associate Justice of the U.S. Supreme Court. After studying his judicial record and participating in his confirmation hearings, I have decided to vote in favor of the nomination.

As I have so often said in the past, I believe that the constitutional responsibility to "advice and consent" on the President's nominee to the Supreme Court is one of the most important responsibilities granted to a U.S. Senator. For Judiciary Committee members, that duty becomes more acute since we are entrusted with the role of determining the nominee's identity and philosophy.

Once again, the hearings have proven to be a critical part of the nomination process. I would like to commend Chairman BIDEN and the ranking member, Senator THURMOND, for their stewardship in these hearings. They have done a remarkable performance in conducting these fair and impartial proceedings.

In Judge Souter, President Bush nominated an individual with intellectual ability, integrity, and judicial temperament. He has a wealth of experience as a State attorney general and a State supreme court justice. Indeed, he has devoted his life to public service. Over the 5-week period between the announcement of Judge Souter's nomination and the onset of his hearings, I had the opportunity to read numerous opinions written by Judge Souter. Opinion after opinion exhibited clear and concise legal reasoning. His writing reflected a great understanding of the legal issues before him.

In addition to his impressive credentials, Judge Souter received great accolades from his colleagues and lawyers who appeared before him. They praised his fairness, temperament and judicial skill. He was unanimously given the American Bar Association's highest ranking for this post.

My initial impression of Judge Souter was very positive. However, I stated at the outset of the hearings, there was still much to learn about Judge Souter. Supreme Court justices possess tremendous power in our system of government. Thus, it is essential that each Senator feel secure placing our individual liberty, freedoms and the future of our country in the nominee's hands. We needed to know how Souter would handle the great constitutional issues of our day.

Throughout the hearings, I personally believe that the nominee was forthcoming in his responses regarding issues that he was at liberty to discuss. During his 3 full days of testimony, Judge Souter was asked questions on a wide range of topics regarding his attorney general briefs, his State court decisions, and his opinion on settled constitutional law. At times, Judge Souter refrained from answering questions on controversial areas of the law. I do not challenge his prerogative to draw a reasonable line on the propriety of answering certain questions. We may quibble where he did in fact draw the line, but this Senator was left satisfied with his responses.

It was not too long ago when he had nominees who would stonewall this committee. That strategy will no longer be tolerated. As Chairman BIDEN so eloquently stated at the outset of these hearings, the Senate and the American public have a right to know where David Souter stands on these great issues. Now that the hearings have concluded, I believe we can envision what sort of Justice David Souter will become.

From the beginning he alleviated the concerns of many of my colleagues and myself in recognizing a general right-to-privacy in the Constitution. I believe that right does exist in the Constitution and that it is fundamental to the liberty and freedom that each American believes the Constitution protects.

It also became quite evident that Judge Souter did not have a hidden agenda he would attempt to impose upon the Court. Instead, Judge Souter is a proponent of judicial restraint. He respects and defers to precedent. He understands the respective powers of the three branches of Government. Most importantly, he understands the role of the Court in our system and its duty to protect individual liberties.

No one in this body will ever be satisfied with every response of a nominee. I would have liked to have heard Judge Souter's own standard for gender discrimination under the equal protection clause. But I feel confident that he will not attempt to dismantle the protections the Court has provided in this area.

Changes in the Court's composition are disruptive but inevitable. Justice Brennan's retirement is indeed a turning point in the history of the Supreme Court. Although I disagreed with some of Justice Brennan's decisions, no one can deny his mark on the Court or his place in history. In that respect, Judge Souter, as he so candidly admitted, has some pretty big shoes to fill. He will, I believe, serve the Court and our country well.

We have no absolute assurances how any nominee or sitting Supreme Court Justice would vote. The Constitution does not entitle the Senate such a guarantee. Our ability to predict a justice's future decisions is limited. Justices have changed their positions from time to time. Throughout their careers they face constitutional issues never contemplated at the time of their nomination. Thus, the ultimate question we as Senators must ask ourselves is whether we feel secure entrusting him with the tremendous responsibility of protecting the rights embodied in our Constitution. I feel confident that Judge Souter will guard these rights judiciously.

In the end, I believe the process worked. President Bush presented us with a nominee possessing intellectual excellence, integrity, judicial temperament and experience. The Committee thoroughly examined the nominee and questioned him on the great constitutional issues of our day.

I honestly believe that President Bush chose Judge Souter because he

will be a fair and open-minded jurist. And, most importantly, as he so often stated during the hearing, he will listen. He was not chosen to turn back the clock on the great constitutional principles of our day. Through the hearings the members of this committee and the American public heard an individual with a great understanding of the Constitution and the role of the Court in protecting our individual liberties. I urge my colleagues to confirm Judge Souter.●

IONA COLLEGE 50TH ANNIVERSARY

● Mr. D'AMATO. Mr. President, from one building and a total of 93 students, Iona College has grown over the last half-century both in size and diversity, as well as in the focus and reach of its programs.

Founded in 1940 by the Congregation of Christian Brothers, Iona takes its name from an island located in the Inner Hebrides, just off west coast of Scotland. There the Irish monk, Columba, established an abbey from which missionaries went forth to teach and evangelize. The island of Iona beame a beacon of faith and learning which contributed significantly to the civilization and cultural development of Western Europe.

The strength of this heritage still endures at Iona 50 years after its establishment, both in the commitment to its founding principles and in the resolve to discover new ways of expressing those principles in our ever-changing time.

With an enrollment of 7,000 students from all over the Nation and around the world, Iona has emerged as the 16th largest independent college in New York State. And it has grown in strature as well as size. Iona has taken a leading role in harnessing the forces of technological and global change and tying them into the traditional liberal arts and business administration curriculum. Through alumni support and the backing of prestigious foundations and corporations, Iona has been able to build new academic facilities, such as the Murphy Science and Technology Center. They have also expanded the range of its academic programs, offering four undergraduate degrees in 47 major fields, 17 separate graduate degrees, four post-master's programs, and several other post-graduate programs.

Throughout this period of expansion, Iona has worked to preserve the spirit of individual self-esteem and mutual respect—the genuine spirit of community—which characterized the college in its early days. I would like to take this opportunity to commend Iona College for its 50 years of dedication to academic excellence. During the past half-century, Iona has grown into one of New York's most respected educational institutions, and has truly lived up to its goals of scholarship, vision, and service.

CIRCLE OF POISON

● Mr. WILSON. Mr. President, this morning I would like to set the record straight on the circle of poison provisions of the 1990 farm bill.

This long overdue legislation, which incorporates provisions found in several bills which I have introduced during the last 3 years, will protect our food supply and our environment from illegal pesticides. It does so in a manner that respects the legitimate needs and interests of manufacturers and provides the flexibility needed to meet serious emergencies such as famine or plague and to encourage the development of new, less hazardous products. The Senate farm bill's circle of poison provisions that I and my colleagues on the Agriculture Committee worked so hard to draft is a responsible solution to a pressing problem. The House has made less rigorous circle of poison provisions part of their farm bill and the conference committee will soon meet to iron out the differences.

Of course there will be spirited debate on the exact terms of the final version which both the House and Senate will adopt. This is as it should be. But the debate must be fair and honest. Sadly, there are signs that this may not be the case.

One chemical company has circulated a deceptive letter to "Friends of Agriculture" which warns that "The Senate version prohibits the export of unregistered pesticides—no exceptions." This is not true, and they know it. In addition to allowing the export of unregistered pesticides for research or in cases of plague or famine, the Senate farm bill allows the export of unregistered pesticides whose active ingredient is the subject of a food tolerance; that is, a determination that it may be safely allowed on food. This latest provision was added by the Agriculture Committee to deal with pesticides which are used on crops such as coffee and bananas which are a large part of the American diet but are not grown here.

It is not necessary to register pesticides for use in the United States if they are not used here, and the bill drafted by the Agriculture Committee and adopted by the Senate does not impose that sort of senseless, makework burden on American manufacturers. But we know that today Americans eat from a global food basket and that if a pesticide is exported for use on food grown overseas, it will surely find its way to our dinner tables. Such a pesticide must be proven safe for our children's food. Thus the Senate farm bill allows the export of unregistered pesticides that are the subject of a food tolerance under the Food Drug and Cosmetic Act. Chemical manufacturers know this and have discussed the consequences of this with Agriculture Committee staff. Why then is a letter circulating that denies the existence of this carefully crafted provision?

This same letter says that the Senate farm bill will require U.S. companies "to wait until registration is achieved in the United States before testing and marketing products in other countries", thereby chilling U.S. R&D efforts. Again, this is untrue. As I mentioned earlier, the bill which we on the Agriculture Committee drafted allows the export of unregistered pesticides for experimental use including field testing. It simply requires that the manufacturer give to the government of the country where the experiments will be conducted a package of product safety data that is comparable to the data that one must make available to Americans before one may conduct pesticide experiments in the United States. The government of the country to which the experimental pesticide is being sent must also consent to the experiments which the manufacturer proposes to conduct on its soil. These perfectly reasonable provisions were added to our committee's bill in response to specific comments by domestic manufacturers.

Trade groups have also contributed to the stream of misinformation concerning the circle of poison bill. One trade journal claims that the bill imposes a "ban on research shipments" of pesticides. Again, the persons involved now that this is patently false.

As I said earlier, all of us expect a spirited debate on this bill. However, we must not allow our debate to be corrupted by those who would place falsehoods before us. Whoever engages in such behavior should know that the truth will eventually come out. Indeed we must wonder why such tactics are ever used at all.

I would be deeply offended if misinformation is being spread for the purpose of frightening Senators and Congressmen in the hope of scuttling this bill. I am certain that all of my colleagues, especially my colleagues on the Agriculture Committee who worked so hard to draft a good bill, would be similarly offended by such cynical manipulation.

I ask that all Senators join with me in urging our conferees to ignore any calculated deceptions and to consider the circle of poison provisions on its merits. I am confident that, upon doing so, the conferees will report back to us with a strong bill that preserves the provisions that were carefully wrought by our Agriculture Committee and adopted by the Senate.●

AWARD GOES TO FATHER-SON TEAM

● Mr. LEVIN. Mr. President, I rise today to pay tribute to George Curis, Sr. and George Curis, Jr., the father-son team who are this year's recipients of the March of Dimes "Alexander Macomb Citizen of the Year Award."

This duo is well-known, throughout metropolitan Detroit, for their Elias Brothers Big Boy Restaurants. George Curis, Sr., opened his first Big Boy restaurant in 1960. Currently, his three sons operate one of the largest franchisee chains in the Big Boy family. George Curis, Jr., serves as president of this franchise. His father is now president of Curis Management, Inc., which manages six different companies.

Despite their incredibly busy business schedules, both of these men devote a very considerable portion of their time to voluntary public service. George Curis, Sr., spends a good amount of his time working with the Capuchin Soup Kitchen. He is also actively involved with a number of charities, including; Boy Scouts of America, March of Dimes, and the Easter Seals. His son belongs to a large number of Michigan State University organizations. George Curis, Jr., also maintains an active role in the United Communities Services, March of Dimes, and the Easter Seals. Additionally, both of these men have dedicated much time, energy and financial assistance to the Catholic Church.

It is evident that George Curis, Sr., and George Curis, Jr., have made a life long commitment to helping the less fortunate. A wonderful example of this teams' selfless character is the emphasis they put on the March of Dimes' Award Dinner. In a statement to the press, they said, "The real award that night is knowing that the moneys raised through the benefit dinner and a silent auction will go to further birth defect research." Both generations of the Curis family can take well deserved bows upon receiving their award. I join the people of my State in congratulating the corecipients of this year's March of Dimes "Alexander Macomb Citizen of the Year Award."●

THE NOMINATION OF JUDGE DAVID SOUTER

● Mr. SHELBY. Mr. President, I rise today in support of the nomination of Judge David Souter to be an Associate Justice of the U.S. Supreme Court.

The advise and consent function, in regard to Supreme Court nominations, is one of the most important powers that a U.S. Senator possesses. However, before expounding further on the reasons that I support Judge Souter, I would first like to briefly examine my own approach to judicial nominees. I believe that a judge's only legitimate exercise of power is to apply the law to the facts of the case brought before him, under the proper judicial process, and to render a reasoned, unbiased decision. In particular, the law that a Justice of the Supreme Court must apply includes the Constitution, Acts of Congress, and prior decisions of the Supreme Court. Just as an ordinary citizen is bound by these three sources of law, so a Supreme Court Justice is bound.

If a judge were to deem himself not bound by the law, and decided cases on the basis of morality, personal or public opinion, then we would not have a government based on law. We would be faced with one of the great fears of the Framers of the Constitution, a government of men. Simply put, a dictatorship of the Judiciary.

I do not espouse a theory that judges are mere machines who look at only the letter of the law to decide cases. However, I do believe that a judge must work to ensure that his personal views do not become the basis for decisions.

I support Judge Souter because I believe that Judge Souter not only has a profound understanding of American constitutional law, but has a keen understanding of the role the Supreme Court plays in our society. Judge Souter, in his testimony, stated that judges are bound by the law. I believe that Judge Souter demonstrated in his 3 days of intense testimony before the Senate Judiciary Committee that he possesses the character, intellect, legal ability, and judicial temperament to become a great Supreme Court Justice.

I understand those individuals who have expressed concern about Judge Souter's refusal to be more forthcoming in testimony about specific issues. However, I do believe that Judge Souter was correct in refusing to respond to questions on how he will rule on specific cases that will come before the Court.

In his testimony before the Judiciary Committee, Judge Souter provided the Senate with some insights into his judicial philosophy. Judge Souter stated that the two important lessons that he learned from his days as a trial court judge were that:

First, whatever court a judge is in, whatever that judge is doing, whether it is on a trial court or appelate court, at the end of his task some human being is going to be affected; and

Second, judicial rulings affect the lives of other people and if a judge is going to change peoples lives by what he does, he had better use every power of his mind, of his heart, of his being, to get that ruling right.

Judge Souter, I hope you will remember those two lessons. When you join the Supreme Court, they will be even more important for a Supreme Court Justice than a trial court judge.●

TRIBUTE TO ISAAC STERN

● Mr. SIMON. Mr. President, one of the people who has been an inspiration through the years for my wife and me is Isaac Stern.

I have never had the privilege of meeting him, though I have talked with him on the phone.

Not only is he one of the world's greatest artists, recently he was interviewed by U.S. News & World Report and showed such eminent common sense that I thought my colleagues and staff members and others who read the CONGRESSIONAL RECORD would find it of interest.

I ask to insert the interview in the RECORD at this point.

The article follows:

ENCHANTING YOUR CHILD WITH MUSIC

When should a child be introduced to music?

Music is the most natural activity for a human being, and it should be a part of everyday life. A child should learn music just as he learns reading, writing and arithmetic; it should be just as central in his education. From the moment a child is born, he can be put to sleep with a song and awakened with a quartet by Haydn or a Bach cantata. There are dozens of wonderful musical videotapes for small children.

I was at Yo Yo Ma's the other day, and he had 30 videos and tapes in a basket for his children, classic tales like Kipling's Just So Stories set to music. They're put out by Sesame Street and Disney, by Puffin and Caedmon and even by Bobby McFerrin. Yo Yo told me he puts his kids to sleep with Mozart symphonies and Beethoven quartets—only the best-quality Muzak. You see, I believe in the subliminal power of what surrounds a child. Parents should have respect for that marvelously rich and questing thing called a child's brain. It's like a huge dry sponge, ready to absorb any kind of moisture you put near it. The more you feed it with good things, the more it will search for them.

When should formal musicial training start?

You can't really count on the normal child's span of concentration to be sufficient till the child is about 5 or 6. I know many parents are influenced by the Japanese system of teaching masses of even younger children by rote, but I don't think it's a great idea, because it becomes like teaching a kid how to pick up a fork: The child is put through a set of automatic physical maneuvers. But the child isn't learning because he wants to learn, and I think that's important from the very beginning.

It is most important to find a teacher who is passionate about music and knows how to reach a child. Education should be about discovery, about the exultation of being alive, the ecstasy of knowledge.

As for the kind of instrument, that depends on the child. The piano is probably best, because it is the musical instrument most closely connected with the way music is written—vertically, with chord structure and harmonic differences. But I think singing is a great thing to teach. There's a Hungarian system called the Kodaly [pro-

nounced ko-dye] system that I am very high on because it uses no instruments, just the human voice. Kids who learn this sytem do astonishing things musically, and their comprehension in mathematics, in logic and in reading also goes right off the graph. Even for "disenfranchised" kids, from different backgrounds and cultures, it works like magic. The teachers are carefully trained, and they use songs that are familiar to the child. They teach the kids hand signals corresponding to the notes of the scale, and professional terms like chord structure and key signature and cadence. The kids learn the melody, then the rhythm and then the words. I saw a class of 7-year-olds who were not in a music school take dictation of a melody from a teacher in Hungary. And when she asked, "Who's going to give me a Mozart cadence and a Haydn cadence and a Bach cadence?" three different kids did just that.

How do you feel about keyboards and other electronic instruments?

I realize that for today's kids, electronics are a way of life, and to some degree you have to give a kid his head and see where it leads him. But an electronic instrument can't breathe like the human voice or an acoustic instrument. It does not speak with the urgency that I can use sitting opposite you and looking at you and making you listen. What it can do is blast the living daylights out of you till you want to run out of the room screaming. The child is attracted to it because the instrument does all the work, so the kid doesn't have to. I suppose if you can teach your child just once to sing a melody without all those screaming hysterics, then let him have the other instrument. But remember that the hardest thing is simplicity.

Can pop music be part of teaching music to children?

You don't have to teach pop music to children. It's in the air. You can't turn on a television set without getting blasted by advertisements that use the kind of sound that reaches the most people in the shortest space of time, which is the very antithesis of any intellectual inquiry. You don't have to think; it thinks for you. You don't have to feel; it feels for you.

I'm not damning all pop music. I grew up with Benny Goodman and Count Basie and Ella Fitzgerald, people who were great artists, with a gentleness in their music. They were very healthy for the kids of their generation, just as the Beatles were very healthy for theirs. But some of today's more raucous, abrasive pop music not only irritates me but makes me fearful for the effect it has on thinking young minds. In some of this music, violence and the call to violence have become acceptable. It's not acceptable to me. I view the arts as freeing us from the slavery of our worst emotions. They're not a home for hatred.

So if you were a parent with teenage children . . .

I would be very careful what they listened to. I don't believe in censorship from the outside, because it never knows where to stop. But I do believe in the self-censorship of taste and education. And that's where the parent is responsible. It's not forbidding the kid to hear something. It's enchanting him with something else.

What should parents do if they believe they have an exceptionally talended kid, a prodigy?

They should have their heads examined. Oh, there are gifted children; I've seen so many hundreds of them. But prodigy is a terrible word. It is used too loosely, and it puts unnecessary baggage on the back of a very gifted child who may already have trouble handling the expectations of his elders. Children should be warmly and lovingly encouraged, not burdened. Most kids are gifted if you give them a chance.

If a child is serious about music, how long should he practice?

As long as he can concentrate. He needs to play at least a couple of hours a day. But if his attention span is 25 minutes, then let the practice be 25 minutes and then, later in the day, another 25 minutes. Hopefully, he'll learn the lesson that is best taught by the arts: That freedom comes only from discipline. I'm not talking about autocratic discipline. I'm talking about self-discipline. I personally don't think pushing a kid works.

Should young children be asked to perform for relatives or their parents' friends?

The very worst thing you can do is push kids to perform on demand. Of course, there should be a goal to work toward and an occasion to show other people what you can do. But that should be a joy, not a burdensome necessity. If the child says, "I don't want to," let him alone. Too often a kid is forced into a vicarious performance for his parents or teacher.

The other danger is that a kid will learn to be a showoff. Children's egos are easy to blow up far beyond what their talent merits. Let the kid perform with his friends, but don't show him off. Otherwise, he learns that his music is about impressing other people, rather than expressing something for himself.

Conversation with Miriam Horn.●

BLUE RIBBON SCHOOLS PROGRAM

● Mr. AKAKA. Mr. President, I rise today to extend my heartiest congratulations and deepest aloha to Aikahi and Waiahole Elementary Schools—winners in the 1989-90 Blue Ribbon Schools Program.

Education is an important priority of this country. Without educated citizens, we could not compete in the international markets or send qualified troops to defend and protect our Nation. In these trying economic times, we have placed greater accountability and increased demands on our schools. The Blue Ribbon Schools Program, or more commonly known as the School Recognition Program, brings attention to outstanding elementary and secondary schools across the country.

Based on stringent criteria, Hawaii nominated three exceptional elementary schools—Aikahi, Mokulele, and Waiahole. As a former teacher, principal, and administrator, I am proud and deeply honored to represent these schools in Washington.

Almost 500 schools were nominated during the 1989-90 selection process, and only 221 of those were recognized for their exemplary educational programs. Both Aikahi and Waiahole elementary were chosen as blue ribbon schools. In addition, Aikahi Elementary School received special honors for their excellent geography program.

Mr. President, the Blue Ribbon Schools Program is an educational program designed to improve our Nation's schools. Participating local school communities conduct self-evaluations to further pursue programs of excellence and create a sense of shared purpose. Technical assistance is also provided to bridge recognized programs with potential schools, thereby creating an environment in which all students—gifted, average, and those at risk—can learn.

I would like to commend the principals, teachers, parents, and most importantly the students, for their dedication and commitment to these worthy schools. With the cooperation of all those involved, schools become a learning and nurturing environment—an important factor in making a difference.●

HARKIN HONORED FOR COMMITMENT TO DISABLED

Mr. SIMON. Mr. President, I rise today to honor my friend and colleague, the Senator from Iowa, TOM HARKIN. Senator HARKIN is the 1990 recipient of the American Horticultural Therapy Association's Congressional Initiatives Award. As the chairman of the Subcommittee on Disability Policy, TOM HARKIN continues to be a tireless leader in the fight to ensure equal opportunity for Americans with disabilities. I want to congratulate Senator TOM HARKIN for this award and I ask that Senator HARKIN's remarks be included in the RECORD, as well as the remarks of the presentors of this distinguished award.

The material follows:

CONGRESSIONAL INITIATIVES AWARDS, SENATOR TOM HARKIN, MARCH 27, 1990

COMMENTS BY NANCY STEVENSON, PRESIDENT AMERICAN HORTICULTURAL THERAPY ASSOCIATION

On behalf of the sponsors of the 5th Annual Congressional Initiatives Award, I welcome you all to our luncheon and awards ceremony. My name is Nancy Stevenson and I am president of the American Horticultural Therapy Association. Since 1983 our association has assisted more than 1,400 persons with disabilities to become employed in horticulture and similar work and to prove to America that productivity need not be impaired or diminished by physical or mental disabilities.

The members of our association not only tend the garden but also tend to human growth and development. Through horticultural therapy they are helping in the physical rehabilitation and mental restoration of thousands of people with special needs—people who are physically, mentally, emotionally, or developmentally disabled; older adults; children and disadvantaged youth; people in correctional facilities; and others who can benefit from therapeutic exercise and outdoor activity.

The professional horticultural therapist can help those in need seek dramatic physical, educational, social, and psychological growth. In communities throughout the

country horticultural therapists are at work enriching the lives of more than 23,000 persons through horticultural therapy.

In a suburban Chicago senior center a 72 year old patient who has suffered a stroke navigates her wheelchair towards an upended drain tile full of a rich soil mix and begins to work the soil in preparation for planting a flower garden. In a New York rehabilitation center a blind child breaks into a broad grin as she savors the scent of the mint she has planted and carefully tended in her herb garden. In a Denver rehabilitation hospital a horticultural therapist assists a 30 year old paraplegic attach a full-arm cuff so he can manipulate a trowel. In Central Michigan a slender inmate serving a life sentence prunes a fruit tree and demonstrates his skill to a fellow inmate. In Suburban Washington, D.C. a mentally challenged youth is up at dawn preparing his lunch before a day of mowing and grounds maintenance at a federal facility.

Through horticultural therapy these individuals have been helped to lead happier, healthier and more productive lives. Each can benefit regardless of wealth, background, age, sex, country of national origin—or even political party.

Today we invite you to honor a member of the U.S. Congress who has helped us to make our work possible. I join our cosponsors the American Association of Nurserymen, The Florists' Transworld Delivery Association and the Society of American Florists in saluting his exceptional leadership. And now, I would like to introduce our cosponsor Mickey Oberlander, President, Florists' Transworld Delivery Association.

COMMENTS BY MICKY OBERLANDER, PRESIDENT FLORISTS' TRANSWORLD DELIVERY ASSOCIATION

Thank you, Nancy. Good afternoon and again, welcome to the American Horticulture Therapy Association's Congressional Initiatives Award Ceremony. I am pleased to stand before you today on behalf of FTD, to honor Senator Harkin.

Since 1985, FTD has been proud to participate in this award and it's commitment to both the disabled and the Floral industry. FTD applauds the work of AHTA and of Senator Harkin, because the small businesses in our industry, the floral industry, need the contributions to the workforce which can be offered by the disabled.

FTD now shares sponsorship of the AHTA awards ceremony with the American Association of Nurserymen and with the Society of American Florists and we are pleased to do so. And now, I'd like to introduce the Chairman of the National Horticulture Industry Council and the Executive Vice President of the American Association of Nurserymen, Lawrence Scovotto to present the award.

COMMENTS BY LAWRENCE SCOVOTTO, EXECUTIVE VICE PRESIDENT, AMERICAN ASSOCIATION OF NURSERYMEN

Ladies and Gentlemen, it is my privilege to introduce our Honoree this afternoon. Now more than ever our nation is recognizing the value of both our human and natural resources. In just the past few months Congress has begun consideration of a new "America the Beautiful" proposal to plant, maintain and improve one billion trees over the next several years, and the "Americans With Disabilities Act" to protect the rights of disabled Americans. Each of these landmark programs will provide a demanding challenge to our nation.

Indeed we all seek a greener and healthier America and one in which all in our society are recognized and permitted to participate fully. In the next few months we hope to see this vision take shape. Through a major public action campaign community organizations will begin to plant trees nationwide, while employers and others seek new ways to assure equality for all. Making our public transportation, public accommodations and places of employment more user-friendly for all will be our challenge.

Our honoree today has championed this vision of a better America. Elected to serve in Congress from Iowa's Fifth Congressional District in November 1974, he served for five terms. Senator Harkin was elected to the U.S. Senate in 1984. At his swearing in ceremony the Senator arranged to have a sign language interpreter available so that his brother, who is deaf, could fully participate in the ceremony.

Through his own personal experiences he brings a longstanding and abiding personal commitment to human rights. Senator Harkin has dedicated his political career to improving opportunities for children and adults with "Special Needs". He serves as a member of the Committee on Labor and Human Resources and chairs the Subcommittee on Disability Policy. He also serves as the chairman of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee. By chairing authorizing and appropriations committees for committees addressing legislation which affects individuals with disabilities he can carry through his advocacy with a one-two punch.

During his term of office in the Senate, the Senator has been the chief sponsor and proponent for landmark programs including legislation to: enhance the independence of persons with developmental disabilities; provide technology related assistance for persons with disabilities; establish a new National Institute on Deafness and other Communication Disorders; strengthen advocacy and protection from abuse and neglect for persons who are mentally ill; and protect the civil rights of Americans through expansion of anti-discrimination legislation.

In referring to the pending American With Disabilities Act Senator Harkin noted: "I am also proud to be the chief sponsor of the American With Disabilities Act (ADA), which was passed overwhelmingly by the Senator in September and is now before the House of Representatives. The education of the handicapped act has prepared millions of students with disabilities to assure productive roles as adults. Passage of the ADA will give these individuals with disabilities the power to make choices, to decide for themselves what kind of life they want to lead, and provide a meaningful and effective opportunity to become independent and productive members of society."

The National Horticulture Industry Council proudly presents the 1990 Congressional Initiatives Award to Senator Tom Harkin or Iowa for his outstanding leadership in advancing employment of persons with disabilities. Through his energy in promoting a full life for all citizens he has earned our gratitude and respect.

J. Sten Crissey, President of the Society of American Florists is here with us today to honor Senator Harkin and will join me in a special presentation.

REMARKS BY SENATOR HARKIN

Thank you for this award and for your association's longstanding commitment to employment for people with disabilities.

The late Ella Grasso had this motto for overcoming adversity: "bloom where you are planted." But to bloom, a any good gardener knows, you need nourishment—fresh air, sunshine, and rain. If you are shunted into a dark corner away from the light—as people with disabilities have traditionally been—you simply cannot grow, much less bloom.

I remember when my brother Frank went off to the Iowa School for the Deaf in the 1940's. He was told he could be one of three things: a printer's assistant, a cobbler, or a baker. But Frank had his own horizons and his own dreams—and instead he became a skilled worker and union member, who helped assemble the very Navy jets I flew in the 60s.

Serving on the Senate Subcommittee on Disability Policy has given me the chance to meet some of the most "able" people I know. Educators like I. King Jordan of Gallaudet, who reminded us all that "the only thing deaf people can't do is hear." Examples like Jim Brady who fight for a stronger federal commitment to rehabilitation—and for a wider awareness that any of us, anytime, could become disabled. All it takes is an assassin's bullet, a car accident, a case of spinal meningitis or measles as a child, a war injury, a wayward gene.

When my friend Dan Piper of Ankeny, Iowa, was born with Down's Syndrome in 1970, doctors advised his parents to put him in a home. Instead, they took him home. And today—thanks to their love, their belief in him, and the local school's commitment to early intervention and special education—Dan Piper is a high school graduate.

Had he been put in a home and kept there until age 60, taxpayers would have paid close to $5 million to support him. Instead, his special education has cost just $63,000 and he is a taxpayer himself.

But what does his future hold? A job? An apartment of his own? A life like yours or mine? Or discrimination by employers, landlords and his own government? What the future holds is the Americans with Disabilities Act. This year Congress is going to pass, and the President is going to sign, landmark legislation to bring 43 million Americans into the mainstream of life. Then we can truly claim to be a nation pledged to liberty and justice for all"—and every American will be guaranteed a chance to bloom.

When I reintroduced the ADA bill early last year, there were those who warned that it would be stymied by the opposition of some in the business community. I thought about this and the work it would take to make it law. But then I concluded there was no reason for me to be a Senator, and chairman of the Subcommittee on Disability Policy, if not to speak for those too long denied a voice, too long denied a role, too long denied a day in the sun. And the result has been a truly bipartisan, broadly supported piece of legislation.

Disabilities are no respecters of party. And disability policy has always had its champions from both sides of the political aisle, be it Lowell Weicker or Paul Simon, Bob Dole or Tony Coelho, Dave Durenberger or Claude Pepper, Orrin Hatch or Ted Kennedy. President Bush, the very day he was inaugurated, announced that the Americans with Disabilities Act had his support. So this bill is not just about civil rights, but also about the kind of leadership it takes to make rights a reality.

Now, with House passage in sight, supporters of the Americans with Disabilities Act can look forward to a real horticultura-

list's delight—a Rose Garden signing ceremony at the White House!

Thank you.

COMMENTS BY J. STEN CRISSEY, PRESIDENT SOCIETY OF AMERICAN FLORISTS

As part of our ceremony each year we have traditionally presented our 21-Flower Salute to the Congressional Initiatives Honoree. Congratulations Senator for receiving our highest honor and for your personal commitment to this important work. This 21-Flower Salute comes to you from the members of our industry who seek a more beautiful America. One where we are all free to enjoy the rights and benefits of our great nation.

REMARKS BY SENATOR ALAN CRANSTON

I came up here to make sure that he got that award. Tom richly deserves the award for his leadership on behalf of disabled Americans. That's a unique group of Americans, as I trust you all have thought true. It's one area group that any one of us, any American may become a member of at any moment. I have had my own opportunities to work very hard on legislation related to disabled Americans. But nobody has been more effective than Tom Harkin. I'm delighted to recognize that and to give him this recognition today. Tom is a courageous and as conscientious and as full of appropriate vision as any member of the Senate. It's a great privilege for me to work with him. It's a privilege for me to join in honoring him today.

CLOSING COMMENTS BY LAWRENCE SCOVOTTO

Senator Harkin and Guests, to conclude our ceremonies I would like to share a quote from "Work" by Thomas Wolfe:

"So then to every man his chance, to every man regardless of his birth, his shining golden opportunity, to every man the right to live, to work, to be himself and to become whatever thing his mankind and his vision can combine to make him. This seeker, is the promise of America."

We thank you all for joining us this afternoon.●

ARCTIC RESEARCH AND POLICY ACT AMENDMENTS

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 751, S. 677, the Arctic Research and Policy Act amendments.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 677) to amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of a provision, the reference shall be deemed to be made to the Arctic Research and Policy Act of 1984.

SEC. 2. Section 103(b)(1) (15 U.S.C. 4102(b)(1)) is amended—

(1) in the text above clause (A), by striking out "five" and inserting in lieu thereof "seven";

(2) in clause (A), by striking out "three" and inserting in lieu thereof "four"; and

(3) in clause (C), by striking out "one member" and inserting in lieu thereof "two members".

SEC. 3. Section 103(d)(1) (15 U.S.C. 4102(d)(1)) is amended by striking out "GS-16" and inserting in lieu thereof "GS-18".

SEC. 4. (a) Section 104(a) (15 U.S.C. 4102(a)) is amended—

(1) in paragraph (4), by striking out "suggest" and inserting in lieu thereof "recommend";

(2) in paragraph (6), by striking out "suggest" and inserting in lieu thereof "recommend";

(3) in paragraph (7), by striking out "and" at the end thereof;

(4) in paragraph (8), by striking out the period and inserting in lieu thereof a semicolon; and

(5) by adding at the end thereof the following new paragraphs:

"(9) recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

"(10) not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties.".

(b) Section 104(b) is amended to read as follows:

"(b) Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.".

SEC. 5. Section 106 (15 U.S.C. 4105) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims) of the United States Code, an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.".

SEC. 6. Subsection (b)(2) of section 108 (15 U.S.C. 4107(b)(2)) is amended to read as follows:

"(2) a statement detailing with particularity the recommendations of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to those recommendations.".

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 677), as amended, was passed.

Mr. BRYAN. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS UNTIL TOMORROW AT 8:45 A.M.

Mr. BRYAN. Mr. President, if there be no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess, under the previous order, until 8:45 a.m., Tuesday, September 25, 1990.

There being no objection, the Senate, at 8:05 p.m., recessed until tomorrow, Tuesday, September 25, 1990, at 8:45 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate September 21, 1990, under authority of the order of the Senate of January 3, 1989:

DEPARTMENT OF STATE

JOHN P. LEONARD, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SURINAME.

KATHERINE D. ORTEGA, OF NEW MEXICO, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 45TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

THE JUDICIARY

OLIVER W. WANGER, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA, VICE MILTON LEWIS SCHWARTZ, RETIRED.

FEDERAL TRADE COMMISSION

ROSCOE BURTON STAREK III, OF ILLINOIS, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF 7 YEARS FROM SEPTEMBER 26, 1990, VICE TERRY CALVANI, TERM EXPIRED.

DEPARTMENT OF VETERANS AFFAIRS

CHARLES L. CRAGIN, OF MAINE, TO BE CHAIRMAN OF THE BOARD OF VETERANS' APPEALS FOR A TERM OF 6 YEARS. (NEW POSITION—P.L. 100-687)

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE INDICATED WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, AND TO BE APPOINTED AS CHIEF OF STAFF, U.S. AIR FORCE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8033:

To be general

To be chief of staff, U.S. Air Force

GEN. MERRILL A. MCPEAK, xxx-xx-xxxx U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFI-

CERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

To be colonel

ABBENANTE, THOMAS L., xxx-xx-xxxx
ADAMS, KERRY G., xxx-xx-xxxx
ADAMS, LONNIE B., xxx-xx-xxxx
AHEARN, DAVID L., xxx-xx-xxxx
ALDRIDGE, GEORGE W., xxx-xx-xxxx
ALLEN, ROBERT C., xxx-xx-xxxx
ALLENBAUGH, RICHARD, xxx-xx-xxxx
ALLEY, RICHARD F., xxx-xx-xxxx
ALLRED, KENNETH L., xxx-xx-xxxx
ANDERSON, RICHARD T., xxx-xx-xxxx
ANDERSON, ROBERT J., xxx-xx-xxxx
ANDREWS, JOHN H., xxx-xx-xxxx
ANTHONY, DAVID J., xxx-xx-xxxx
ARGERSINGER, STEVEN, xxx-xx-xxxx
ARMSTRONG, RICHARD, xxx-xx-xxxx
ATWELL, ROBERT C., xxx-xx-xxxx
AUGER, JOHN D., xxx-xx-xxxx
AYLOR, CORTEZ C., xxx-xx-xxxx
BAILEY, CLAUD, JR., xxx-xx-xxxx
BAILEY, EDWARD L., xxx-xx-xxxx
BAILEY, LINWOOD P., xxx-xx-xxxx
BAILEY, PALMER K., xxx-xx-xxxx
BAINE, WILLIAM E., xxx-xx-xxxx
BAKER, SIDNEY F., xxx-xx-xxxx
BALDWIN, ROBERT L., xxx-xx-xxxx
BANDEL, RAYMOND L., xxx-xx-xxxx
BANKS, JIMMY C., xxx-xx-xxxx
BAREFIELD, ROBERT L., xxx-xx-xxxx
BARFIELD, ANN L., xxx-xx-xxxx
BARR, GEORGE H., xxx-xx-xxxx
BARRETT, GERARD P., xxx-xx-xxxx
BASILOTTO, JOHN P., xxx-xx-xxxx
BEASLEY, CHARLES A., xxx-xx-xxxx
BENNETT, PATRICK J., xxx-xx-xxxx
BERGANTZ, JOSEPH L., xxx-xx-xxxx
BERGMAN, MICHAEL R., xxx-xx-xxxx
BESSENT, ELMO V., xxx-xx-xxxx
BETTS, DONALD W., xxx-xx-xxxx
BISHOP, EUGENE H., xxx-xx-xxxx
BLACKBURN, LINWOOD, xxx-xx-xxxx
BLAKE, JAMES T., xxx-xx-xxxx
BOCCOLUCCI, DANIEL, xxx-xx-xxxx
BOLGER, JOHN T., xxx-xx-xxxx
BOND, WILLIAM L., xxx-xx-xxxx
BORES, DAVID R., xxx-xx-xxxx
BORRENSEN, DAVID F., xxx-xx-xxxx
BOWEN, LESTER R., xxx-xx-xxxx
BOWERS, WILLIAM T., xxx-xx-xxxx
BOWRA, KENNETH, R., xxx-xx-xxxx
BRANHAM, TERRY W., xxx-xx-xxxx
BRIDGES, GARY J., xxx-xx-xxxx
BRIDGES, HUBERT JR., xxx-xx-xxxx
BRIGHT, GEORGE E., xxx-xx-xxxx
BRITTAIN, FRANK W., xxx-xx-xxxx
BROOME, RICHARD E., xxx-xx-xxxx
BROWN, BRYAN D., xxx-xx-xxxx
BROWN, DAVID A., xxx-xx-xxxx
BROWN, JOHN M., xxx-xx-xxxx
BROWN, TERRY E., xxx-xx-xxxx
BROWN, THOMAS C., xxx-xx-xxxx
BROWN, THOMAS E., xxx-xx-xxxx
BROWN, WALTER B., xxx-xx-xxxx
BROWN, WALTER T., xxx-xx-xxxx
BROWNE, ROBERT W., xxx-xx-xxxx
BRUNNER, DONALD J., xxx-xx-xxxx
BRUNS, DONALD J., xxx-xx-xxxx
BRYAN, LARRY E., xxx-xx-xxxx
BUBB, ERNEST E., xxx-xx-xxxx
BULLINGTON, TERRY W., xxx-xx-xxxx
BUSK, ARLAN N., xxx-xx-xxxx
*BUTCHER, DAVID G., xxx-xx-xxxx
CABABA, ROBIN R., xxx-xx-xxxx
CAJIGAL, GEORGE L., xxx-xx-xxxx
CALL, GORDON H., xxx-xx-xxxx
CALLEN, JAN E., xxx-xx-xxxx
CAMPBELL, JAMES L., xxx-xx-xxxx
CAMPBELL, ROBERT D., xxx-xx-xxxx
CAPKA, JOSEPH R., xxx-xx-xxxx
CARDWELL, BARRY E., xxx-xx-xxxx
CARLSON, ADOLF, xxx-xx-xxxx
CARR, JOHN, J., xxx-xx-xxxx
CARSON, ROBERT G., xxx-xx-xxxx
CARTER, RICHARD A., xxx-xx-xxxx
CARTER, ROLAND W., xxx-xx-xxxx
CASEY, JOHN T., xxx-xx-xxxx
CASSIDY, RICHARD P., xxx-xx-xxxx
CAVIGGIA, JOHN D., xxx-xx-xxxx
CHANDLER, RICHARD V., xxx-xx-xxxx
CHAPPELL, SAMUEL L., xxx-xx-xxxx
CHENEY, SUSAN P., xxx-xx-xxxx
CHRISTOPHER, PAUL E., xxx-xx-xxxx
CICCARELLO, NICHOLA., xxx-xx-xxxx
CICCOLELLA, ROBERT, xxx-xx-xxxx
CLEARY, DANIEL J., xxx-xx-xxxx
CLOYD, WALTER L. I., xxx-xx-xxxx
COAN, GEORGE P., xxx-xx-xxxx
COCHRANE, WILLIAM M., xxx-xx-xxxx
COLLIER, JAMES E., xxx-xx-xxxx
COLLINS, OLIVER J., xxx-xx-xxxx
CONWAY, RICHARD G., xxx-xx-xxxx
COOK, CHARLES B., xxx-xx-xxxx
COOK DONALD C., xxx-xx-xxxx
COON, ROBERT C., xxx-xx-xxxx
COOPER, BILLY R., xxx-xx-xxxx
CORBELL MICHAEL K., xxx-xx-xxxx
COUGHENOUR, KAVIN L., xxx-xx-xxxx
COUGHLIN, ROBERT J., xxx-xx-xxxx
COWELL, RICHARD A., xxx-xx-xxxx
COWLEY, DAVID E., xxx-xx-xxxx
COX, DANIEL J., xxx-xx-xxxx
CRABBE, JAMES D., xxx-xx-xxxx
CRAIG, RICHARD W., xxx-xx-xxxx
CRAIG, WALTER M., xxx-xx-xxxx
CRAYTON, JUAN V., xxx-xx-xxxx
CREWS, THOMAS M., xxx-xx-xxxx
CROCKERT, JAMES, xxx-xx-xxxx
CRONIN, ROBERT M., xxx-xx-xxxx
CULLING, THOMAS, E., xxx-xx-xxxx
CUMBIE, DONOVAN, R., xxx-xx-xxxx
CUNNINGHAM, JAMES E., xxx-xx-xxxx
CUNNINGHAM, WALTER, xxx-xx-xxxx
DALE, RONALD P., xxx-xx-xxxx
DALE, THOMAS D., xxx-xx-xxxx
DANA, THOMAS, N., xxx-xx-xxxx
DARNLEY, JAMES H., xxx-xx-xxxx
DAVIDSON, DONALD G., xxx-xx-xxxx
DAVIS, THOMAS H., xxx-xx-xxxx
DAY, LOWELL L., xxx-xx-xxxx
DAYTON, KEITH W., xxx-xx-xxxx
DEAN, DONALD G., xxx-xx-xxxx
DEES, ROBERT F., xxx-xx-xxxx
DEIBLER, SCOTT xxx-xx-xxxx
DEWALD, LEE S., xxx-xx-xxxx
DIALS, THOMAS A., xxx-xx-xxxx
DICKINSON, DON P., xxx-xx-xxxx
DICKSON, DWIGHT B., xxx-xx-xxxx
DIMERCURIO, PETER N., xxx-xx-xxxx
DIVER, MICHAEL J., xxx-xx-xxxx
DODGE, RICHARD L., xxx-xx-xxxx
DOESBURG, JOHN C., xxx-xx-xxxx
DOLTON, HENRY J., xxx-xx-xxxx
DOOLEY, JOSEPH C., xxx-xx-xxxx
DOUGHERTY, JOSEPH M., xxx-xx-xxxx
DRUGLEY, GARY P., xxx-xx-xxxx
DUNN, RICHARD J., xxx-xx-xxxx
DUNN, THOMAS A., xxx-xx-xxxx
EBEDRETOWSKI, JAMES S., xxx-xx-xxxx
EDNEY, KERMIT JR., xxx-xx-xxxx
EDWARDS, JOHN R., xxx-xx-xxxx
ELDER DONALD N., xxx-xx-xxxx
ELIAS, THOMAS E., xxx-xx-xxxx
ELLERTSON JACK W., xxx-xx-xxxx
ELLIZEY, THOMAS F., xxx-xx-xxxx
EMERSON, JAMES O., xxx-xx-xxxx
ENGEL, RICHARD A., xxx-xx-xxxx
ENGELBERGER, CHARLE xxx-xx-xxxx
ENGSTROM, CHARLES, L., xxx-xx-xxxx
EPKINS, STEVEN A., xxx-xx-xxxx
ETHERIDGE, JAMES H., xxx-xx-xxxx
EVANS, RICHARD E., xxx-xx-xxxx
FARMER, JAMES Z., xxx-xx-xxxx
FARMER, ROBERT, xxx-xx-xxxx
FERGUSON, WARNER T., xxx-xx-xxxx
FERNANDEZ, ROBERT M., xxx-xx-xxxx
FESS, KENNETH E., xxx-xx-xxxx
FEYEREISEN, PAUL S., xxx-xx-xxxx
FIELDS, JOSEPH A., xxx-xx-xxxx
FISCHER, ERNEST W., xxx-xx-xxxx
FLANIGAN, WILLIAM E., xxx-xx-xxxx
FLETCHER, JOHN E., xxx-xx-xxxx
FOLEY, DAVID W., xxx-xx-xxxx
FONTANA, DENNIS J., xxx-xx-xxxx
FONTENOT, GREGORY, xxx-xx-xxxx
FORD, TERRANCE M., xxx-xx-xxxx
FOSTER, WILLIAM G., xxx-xx-xxxx
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Executive nominations received by the Senate September 24, 1990:

DEPARTMENT OF STATE

ROBERT A. FLATEN, OF MINNESOTA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-CONSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF RWANDA.

WITHDRAWAL

Executive message transmitted by the President during the recess of the Senate on September 21, 1990, withdrawing from further Senate consideration the following nomination:

U.S. AIR FORCE

The following-named officer for reappointment to the grade of general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Gen. Merrill A. McPeak, xxx-xx-xxxx U.S. Air Force